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Rules, Regulations, Orders

TITLE 15—COMMERCE FOREIGN-TRADE ZONES BOARD

[Order No. 4,¹ Amended]

AN ORDER RELATIVE TO THE HANDLING OF GOLD IN FOREIGN-TRADE ZONES

Pursuant to the action of the Foreign-Trade Zones Board, the following Amended Order has been adopted and is promulgated for the information and guidance of all concerned:

Whereas, the Foreign-Trade Zones Board's Order No. 4, dated October 21, 1937 (15 C. F. R., sec. 400.803-A), imposed restrictions relative to the handling of gold and silver in foreign-trade zones;

And whereas, the Secretary of the Treasury, on April 28, 1938,² eliminated the restrictions imposed on the importation and exportation of silver under Treasury Department Orders of June 28, 1934 and May 20, 1935 relating to silver, and the Silver Regulations of August 17, 1934, as amended;

And whereas, the Foreign-Trade Zones Board has authorized that its Order No. 4 be amended to conform with the Order of the Secretary of the Treasury, dated April 28, 1938, relieving the restrictions on silver;

Now, Therefore, Be It Ordered, That the said Order No. 4 of the Foreign-Trade Zones Board is hereby amended to read as follows:

Whereas, section 15 (c) of the Act of June 18, 1934 (U. S. C., title 19, sec. 810 (c)), relating to foreign-trade zones provides as follows:

"The Board may at any time order the exclusion from the zone of any goods or process of treatment that in its judg-

ment is detrimental to the public interest, health, or safety."

And whereas, paragraph 803 (15 C. F. R., sec. 400.803) of the Regulations of the Foreign-Trade Zones Board provides as follows:

"When it shall be reported to the Board that any goods or process of treatment is detrimental to the public interest, health, or safety, the Board shall cause such investigation to be made as it may deem necessary. The Board may order the exclusion from the zone of any goods or process of treatment that in its judgment is detrimental to the public interest, health, or safety."

And whereas, the Board finds that in its judgment the melting, smelting, or refining or other treatment by heating or by a chemical or electrical process of gold in any form within any foreign-trade zone within the continental United States, and the admission into any such zone of gold, with the exceptions herein-after enumerated, are detrimental to the public interest;

Now, therefore, Be It Ordered, That gold in any form may not be melted, smelted, or refined or otherwise treated by heating or by a chemical or electrical process within any foreign-trade zone within the continental United States; and further that gold is hereby excluded from admission into any such zone, except that "fabricated gold", as defined in section 4 of the Provisional Regulations issued under the Gold Reserve Act of 1934,³ may be admitted into and held in such form within any such zone.

² Section 4 of the Provisional Gold Regulations reads in part as follows:

"Fabricated gold" means gold which has, in good faith and not for the purpose of evading, or enabling others to evade, the provisions of the * * * [Gold Reserve Act of 1934, or of the regulations issued thereunder,] been processed or manufactured for some one or more specific and customary industrial, professional, or artistic uses, but does not include gold coin or scrap gold."

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¹ 2 F. R. 2400 (2784 DI).

³ 3 F. R. 1000 DI.



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Attention is directed to the fact that gold may be exported from the continental United States only as provided in the Provisional Regulations issued under the Gold Reserve Act of 1934 (see section 16 regarding the exportation of "fabricated gold").

[SEAL] HARRY L. HOPKINS,
Secretary of Commerce,
Chairman, Foreign-Trade Zones Board.
FEBRUARY 6, 1939.

[F. R. Doc. 39-445; Filed, February 7, 1939;
12:10 p. m.]

[Order No. 5]

IN THE MATTER OF A UNIFORM SYSTEM OF ACCOUNTS, RECORDS, AND REPORTS FOR USE BY FOREIGN-TRADE ZONE GRANTEES

Pursuant to authority of section 16 (a), (b) of the Act of June 18, 1934

(U. S. C., title 19, sec. 81p (a), (b), the Foreign-Trade Zones Board has adopted the following order relating to a Uniform System of Accounts, Records, and Reports for use by Foreign-Trade Zone Grantees:

It is ordered, That the form and manner of keeping the accounts, records, and reports of each zone shall be in accordance with the Uniform System of Accounts, Records, and Reports (Form FTZ-15), which is annexed hereto, and made a part hereof;¹

And it is further ordered, That every grantee of a foreign-trade zone now authorized and established, or which may hereafter be authorized and established, under the provisions of the Act (U. S. C., title 19, sec. 81a-81u), and of the Regulations (15 C. F. R., chapter IV, parts 400 and 401) Governing the Establishment, Operation, Maintenance, and Administration in the United States of Foreign-Trade Zones, shall keep its books, records, and accounts as prescribed in the said Uniform System of Accounts, Records, and Reports.

[SEAL] HARRY L. HOPKINS,
Secretary of Commerce,
Chairman, Foreign-Trade Zones Board.

FEBRUARY 6, 1939.

[F. R. Doc. 39-446; Filed February 7, 1939;
12:10 p. m.]

TITLE 16—COMMERCIAL PRACTICES FEDERAL TRADE COMMISSION

[Docket No. 3205]

IN THE MATTER OF IDEAL GIFT COMPANY

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Supplying, etc., in connection with offer, etc., in interstate commerce or in District of Columbia, of rotary clocks, fountain pen sets and fountain pen and pencil combinations, or any other merchandise, push or pull cards, punchboards, or other lottery devices to enable persons supplied to dispose of or sell such or any other merchandise by use thereof, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Ideal Gift Company, Docket 3205, January 25, 1939]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Mailing, etc., in connection with offer, etc., in interstate commerce or in District of Columbia, of rotary clocks, fountain pen sets and fountain pen and pencil combinations, or any other merchandise, to respondent's agents and to distributors or to members of the public, push or pull

cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute such or any other merchandise by use thereof, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Ideal Gift Company, Docket 3205, January 25, 1939]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc., in connection with offer, etc., in interstate commerce or in District of Columbia, of rotary clocks, fountain pen sets and fountain pen and pencil combinations, or any other merchandise, such or any other merchandise by use of push or pull cards, punchboards, or other lottery devices, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Ideal Gift Company, Docket 3205, January 25, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 25th day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

IN THE MATTER OF S. C. ROSS, INDIVIDUALLY AND TRADING AS THE IDEAL GIFT COMPANY

ORDER TO CEASE AND DESIST

This proceeding having been heard¹ by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief of counsel for the Commission (respondent having filed no brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, S. C. Ross, individually and trading as Ideal Gift Company, or trading under any other name, his agents, representatives and employees, in connection with the offering for sale, sale and distribution of rotary clocks, fountain pen sets and fountain pen and pencil combinations, or any other merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices for

¹ Filed as a part of the original document with the Division of the Federal Register, The National Archives.

the purpose of enabling such persons to dispose of or sell such or any other merchandise by the use thereof;

(2) Mailing, shipping, or transporting to his agents and to distributors or to members of the public push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute such or any other merchandise by the use thereof;

(3) Selling or otherwise disposing of such or any other merchandise by the use of push or pull cards, punchboards, or other lottery devices.

It is further ordered, That within sixty (60) days from the date of the service of this order upon said respondent, he shall file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been complied with.

By the Commission.

[SEAL]

OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-432; Filed, February 7, 1939;
10:12 a. m.]

[Docket No. 3277]

IN THE MATTER OF LLOYD'S DISTRIBUTING COMPANY

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Supplying, etc., in connection with offer, etc., in interstate commerce or in District of Columbia, of electric shavers, radios and fountain pens, or any other merchandise, punch boards, push or pull cards, or other lottery devices to enable persons supplied to dispose of or sell any merchandise by use thereof, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Lloyd's Distributing Company, Docket 3277, January 25, 1939]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Mailing, etc., in connection with offer, etc., in interstate commerce or in District of Columbia, of electric shavers, radios and fountain pens, or any other merchandise, to respondent's agents or to distributors or members of the public, punch boards, push or pull cards or any other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by use thereof, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Lloyd's Distributing Company, Docket 3277, January 25, 1939]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc., in connection with offer, etc., in interstate commerce or in District of Colum-

bia, of electric shavers, radios and fountain pens, or any other merchandise, any merchandise by use of punch boards, push or pull cards or other lottery devices, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Lloyd's Distributing Company, Docket 3277, January 25, 1939]

United States of America—Before
Federal Trade Commission

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 25th day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

IN THE MATTER OF IRVING SCHWARTZ, INDIVIDUALLY, AND TRADING AS LLOYD'S DISTRIBUTING COMPANY

ORDER TO CEASE AND DESIST

This proceeding having been heard¹ by the Federal Trade Commission upon the complaint of the Commission (respondent having filed no answer), testimony and other evidence taken before Miles J. Furnas and William C. Reeves, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (counsel for respondent having filed no brief and not having requested oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Irving Schwartz, individually, and trading as Lloyd's Distributing Company, his agents, representatives and employees, in connection with the offering for sale, sale and distribution of electric shavers, radios and fountain pens, or any other merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Supplying to, or placing in the hands of others, punch boards, push or pull cards, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

(2) Mailing, shipping or transporting to agents or to distributors or members of the public punch boards, push or pull cards or other lottery devices so prepared or printed as to enable said persons to sell

or distribute any merchandise by the use thereof.

(3) Selling or otherwise disposing of any merchandise by the use of punch boards, push or pull cards or other lottery devices.

It is further ordered, That within sixty (60) days from the date of the service of this order upon said respondent he shall file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with.

By the Commission.

[SEAL]

OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-434; Filed, February 7, 1939;
10:12 a. m.]

[Docket No. 3327]

IN THE MATTER OF THE VELTROLA COMPANY

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Supplying, etc., in connection with offer etc., in interstate commerce or in District of Columbia, of electric razors, wrist watches and silverware, or any other merchandise, push or pull cards, punchboards, or other lottery devices to enable such persons to dispose of or sell such or any other merchandise by use thereof, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, The Veltrola Company, Docket 3327, January 26, 1939]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Mailing, etc., in connection with offer, etc., in interstate commerce or in District of Columbia, of electric razors, wrist watches and silverware, or any other merchandise, to respondent's agents and to distributors or to members of the public, push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute such or any other merchandise by use thereof, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, The Veltrola Company, Docket 3327, January 26, 1939]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc., in connection with offer, etc., in interstate commerce or in District of Columbia, of electric razors, wrist watches and silverware, or any other merchandise, such or any other merchandise by use of push or pull cards, punchboards, or other lottery devices, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Sec. 45b) [Cease and desist order, The Veltrola Company, Docket 3327, January 26, 1939]

¹ 3 F. R. 677 DI.

*United States of America—Before
Federal Trade Commission*

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 26th day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

*IN THE MATTER OF CHARLES M. BREGSTONE,
INDIVIDUALLY AND TRADING AS THE
VELTROLA COMPANY*

ORDER TO CEASE AND DESIST

This proceeding having been heard¹ by the Federal Trade Commission upon the complaint of the Commission, (respondent having filed no answer) testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the complaint, (respondent not having filed brief and oral argument not having been requested) and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent Charles M. Bregstone, individually and trading as The Veltrola Company, or trading under any other name, his representatives, agents and employees, in connection with the offering for sale, sale and distribution of electric razors, wrist watches and silverware, or any other merchandise in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices for the purpose of enabling such persons to dispose of or sell such or any other merchandise by the use thereof;

(2) Mailing, shipping, or transporting to his agents and to distributors or to members of the public push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute such or any other merchandise by the use thereof;

(3) Selling or otherwise disposing of such or any other merchandise by the use of push or pull cards, punchboards, or other lottery devices.

It is further ordered, That within sixty (60) days from the date of the service of this order upon said respondent, he shall file with the Commission a report

¹ 3 F. R. 991 DL

in writing, setting forth in detail the manner and form in which this order has been complied with.

By the Commission.

[SEAL]

OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-433; Filed, February 7, 1939;
10:12 a. m.]

[Docket No. 3581]

IN THE MATTER OF ACE PREMIUM COMPANY

SEC. 3.99 (b) Using or selling lottery devices—In merchandising. Supplying, etc., in connection with offer, etc., in interstate commerce or in District of Columbia, of electric razors, toys, cigarette cases and lighters, blankets, watches, and various other articles of merchandise, punch boards, push or pull cards, or other lottery devices to enable such persons supplied to dispose of or sell any merchandise by use thereof, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Ace Premium Company, Docket 3581, January 25, 1939]

SEC. 3.99 (c) Using or selling lottery devices—In merchandising. Mailing, etc., in connection with offer, etc., in interstate commerce or in District of Columbia, of electric razors, toys, cigarette cases and lighters, blankets, watches and various other articles of merchandise, to respondent's agents or to distributors or members of the public, punch boards, push or pull cards or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by use thereof, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Ace Premium Company, Docket 3581, January 25, 1939]

SEC. 3.99 (b) Using or selling lottery devices—In merchandising. Selling, etc., in connection with offer, etc., in interstate commerce or in District of Columbia, of electric razors, toys, cigarette cases and lighters, blankets, watches, and various other articles of merchandise, any merchandise by use of punch boards, push or pull cards or other lottery devices, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Ace Premium Company, Docket 3581, January 25, 1939]

*United States of America—Before
Federal Trade Commission*

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 25th day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles

H. March, Ewin L. Davis, William A. Ayres.

*IN THE MATTER OF HARRY J. SNYDERMAN,
INDIVIDUALLY AND TRADING AS ACE
PREMIUM COMPANY*

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Harry J. Snyderman, individually and trading as Ace Premium Company, or trading under any other name, has representatives, agents and employees, in connection with the offering for sale, sale and distribution of electric razors, toys, cigarettes, cigarette cases, cigarette lighters, pipes, leather goods, fitted cases, blankets, lamps, cocktail shakers, telescopes, opera glasses, knives, pen and pencil sets, tie sets, watches, clocks, cameras, flash lights, compacts and footballs, or any other merchandise, in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of, others punch boards, push or pull cards, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping or transporting to agents or to distributors or members of the public punch boards, push or pull cards or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of punch boards, push or pull cards or other lottery devices.

It is further ordered, That within sixty (60) days from the date of the service of this order upon said respondent he shall file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with.

By the Commission.

[SEAL]

OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-435; Filed, February 7, 1939;
10:13 a. m.]

TITLE 30—MINERAL RESOURCES
NATIONAL BITUMINOUS COAL
COMMISSION

[General Docket No. 15]

ESTABLISHMENT OF MINIMUM PRICES AND
MARKETING RULES AND REGULATIONS

PROPOSALS OF MINIMUM PRICES SUBMITTED
BY THE DISTRICT BOARDS FOR DISTRICTS
NOS. 9, 11, AND 12

At a session of the National Bituminous Coal Commission held at its offices in Washington, D. C. on the 2nd day of February 1939.

The Commission, on the 25th day of May, 1938,¹ having instituted the within proceedings entitled "In the matter of the Establishment of Minimum Prices and Marketing Rules and Regulations, General Docket No. 15", for the purpose of carrying out the provisions of subsections (a) and (b) of Section 4, Part II of the Bituminous Coal Act of 1937, and thereafter, upon the 19th day of August, 1938,² after notice and hearing, having determined the weighted average cost, as provided in Section 4, II, (a) of the Act, for Minimum Price Area No. 2, did, on the 20th day of August, 1938, by Order No. 249,³ direct the District Boards for Districts Nos. 9, 11, and 12 to propose minimum prices in conformity with the provisions of Section 4, II (a) of the Act, and in accordance with the rules and regulations prescribed by said Order No. 249, and

Each of said District Boards having, thereafter, proposed such minimum prices, the Commission, by its Orders entered in this proceeding on October 11th, 21st and 29th,⁴ 1938 directed that a hearing on the proposals submitted by the said District Boards be held in the Hearing Room of the Commission, Morrison Hotel, Chicago, Illinois, commencing on the 14th day of November, 1938, at 10 o'clock A. M., for the purpose of receiving evidence relating to said proposals to enable the Commission to approve such proposed minimum prices, or to enable the Commission to modify such proposed minimum prices, so as to conform them to the requirements of Section 4, II, (a) of the Act, in order that such proposed minimum prices, as approved, or modified, as the case may be, may serve as the basis for the coordination, as provided by Section 4, II, (b) of the Act, and

Reasonable public notice thereof having been given, said hearing was commenced at the time and place stated, and concluded on the 6th day of December, 1938, at which hearing all interested parties were afforded full opportunity to be heard, and

The evidence being adduced, and the Commission being fully advised in the premises, and upon consideration there-

of, the Commission made Findings of Fact and Conclusions relating to the proposals of minimum prices submitted by the District Boards for Districts Nos. 9, 11, and 12, respectively, which Findings of Fact and Conclusions are on file in the Office of the Secretary of the Commission at Washington, D. C., and by this reference are incorporate herein and made a part hereof,⁵ and

Included in the said Findings of Fact and Conclusions relating to each of the aforesaid Districts is an appendix entitled "Schedule of Minimum Prices as modified and approved to serve as a basis for Coordination", which schedule embraces all modifications which the Commission determined to be necessary to conform the proposals of the respective Districts to the requirements of Section 4, II, (a) of the Act, and which the Commission has determined to be the proper basis to be used by the respective Districts for the coordination provided for in Section 4, II, (b) of the Act,

Now, therefore, Pursuant to the provisions of the Bituminous Coal Act of 1937, the National Bituminous Coal Commission orders and directs:

1. That in the coordination of minimum prices, as provided by Section 4, II, (b) of the Act to be hereafter directed by subsequent Order of the Commission, the District Boards for Districts Nos. 9, 11, and 12, will take, as a basis thereof, the schedules as approved herein and set out opposite their respective names as follows:

District No. 9.—Appendix to the Findings for District No. 9, as above referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination."

District No. 11.—Appendix to the Findings for District No. 11, as above referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination."

District No. 12.—Appendix to the Findings for District No. 12, as above referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination."

2. The Secretary of the Commission be and he is hereby directed to cause a copy of this Order, together with Findings of Fact and Conclusions, including the Appendices thereto, for Districts Nos. 9, 11, and 12 to be published forthwith in the FEDERAL REGISTER, and to cause a copy of this Order and Findings of Fact and Conclusions for each of the aforesaid Districts, to be mailed to the Consumers' Counsel, to the Secretary of each District Board, to all interested parties who have entered their appearances in the hearings relating to said proposals, and to make copies of this Order and Findings of Fact, including the appendices thereto, available for inspection by interested parties at the

Office of the Secretary of the Commission, Washington, D. C., and at the office of each Statistical Bureau of the Commission.

By order of the Commission.

Dated this 2nd day of February, 1939.

[SEAL] F. WITCHER McCULLOUGH,
 Secretary.

[F. R. Doc. 39-414; Filed, February 4, 1939;
 12:34 p. m.]

[General Docket No. 15]

ESTABLISHMENT OF MINIMUM PRICES AND
MARKETING RULES AND REGULATIONS

PROPOSAL OF RULES AND REGULATIONS IN-
CIDENTAL TO SALE AND DISTRIBUTION OF
COAL BY CODE MEMBERS SUBMITTED BY
THE DISTRICT BOARDS FOR DISTRICTS NOS.
9, 11, AND 12

At a session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 2nd day of February 1939.

The Commission, on the 25th day of May, 1938,¹ having instituted the above-entitled proceedings for the purpose of carrying out the provisions of Sub-sections (a) and (b) of Section 4, Part II, of the Bituminous Coal Act of 1937, and having, by its Order No. 250, dated August 20, 1938,² directed the District Boards for Districts Nos. 9, 11 and 12 to propose reasonable rules and regulations incidental to the sale and distribution of coal by the code members of the respective districts in conformity with the provisions of Section 4, II, (a) of the Act,

And each of the aforesaid District Boards having submitted such proposed rules and regulations together with the reasons upon which they were predicated, to the Commission in accordance with the provisions of said Order No. 250, the Commission did, by Orders entered herein on October 11, 21, and 29, 1938,³ direct that a hearing on said proposals be held in the Hearing Room of the Commission, Morrison Hotel, Chicago, Illinois at 10 o'clock a. m., commencing on the 14th day of November 1938, for the purpose of receiving evidence to enable the Commission to approve such proposed marketing rules and regulations, or to enable the Commission to modify the proposed marketing rules and regulations as provided in Section 4, II, (a) of the Act in order that such proposed marketing rules and regulations, as approved or modified, as the case may be, may serve as the basis for the coordination provided by Section 4, II, (b) of the Act, and

After reasonable public notice having been given thereof, said hearing was commenced at the time and place stated and concluded on the 6th day of Decem-

¹ 3 F. R. 1200, 1226 DI.

² 3 F. R. 2061 DI.

³ 3 F. R. 2057 DI.

⁴ 3 F. R. 2597 DI.

⁵ See p. 546.

¹ 3 F. R. 1200, 1226 DI.

² 3 F. R. 2058 DI.

³ 3 F. R. 2597 DI.

ber, 1938, at which time all interested parties were afforded a full opportunity to be heard, and the evidence being adduced, the Commission being fully advised in the premises has made Findings of Fact and Conclusions relating to the proposals of each of said Districts, which Findings of Fact and Conclusions are on file at the Office of the Secretary of the Commission, Washington, D. C., and which are by this reference incorporated herein and made a part hereof, and

The Commission having determined that the rules and regulations as set forth in the said Findings of Fact and Conclusions for each of the respective districts are reasonable and are not inconsistent with the requirements of Section 4 of the Act, and do conform to the standards of fair competition established by Section 4 of the Act, and form a proper basis for the coordination provided for by Section 4, II, (b) of the Act.

Now, therefore, Pursuant to the provisions of the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby approves, for the purpose of coordination, the "Rules and Regulations incidental to the sale and distribution of coal by code members," as the same are set forth in the "Findings of Fact and Conclusions" by the Commission for each of Districts 9, 11 and 12 filed this date in the Office of the Secretary of the Commission, Washington, D. C.

The Secretary of the Commission is hereby directed to cause a copy of this Order together with the Findings of Fact and Conclusions, above referred to, to be published forthwith in the FEDERAL REGISTER, and to cause a copy hereof, together with said "Findings of Fact and Conclusions" of the Commission to be mailed to the Consumers' Counsel, to the Secretary of each District Board, to all parties who have filed their appearances in the hearing relating to the aforesaid proposals, and to cause copies thereof to be made available for inspection by interested parties at the office of the Secretary of the Commission, Washington, D. C., and at the office of each Statistical Bureau of the Commission.

By order of the Commission.

Dated this 2nd day of February, 1939.

[SEAL] F. WITCHER McCULLOUGH,
Secretary.

FINDINGS AS TO THE FACTS AND CONCLUSIONS OF THE COMMISSION

Pursuant to the provisions of an Act of Congress approved April 26, 1937, entitled "An Act to regulate interstate commerce in bituminous coal and for other purposes" (Public No. 48, 75th Congress, 1st Sess.), known as the "Bituminous Coal Act of 1937," and hereinafter referred to as the "Act," the National Bituminous Coal Commission, hereinafter referred to as the "Commission," under

and by virtue of the authority granted in Section 4 II (a) of the Act, on the 20th day of August 1938, issued its Orders No. 249 and No. 250 ordering and directing the District Boards for Districts 9, 10, 11, 12, 13, 14, and 15 to propose to the Commission minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced in said districts and reasonable rules and regulations incidental to the sale and distribution of coal by code members within said districts, the minimum prices and marketing rules and regulations to be proposed by the District Board for District 13 to be limited to that part of District 13 known as Minimum Price Area 3, said proposals to be submitted to the Commission on or before the 14th day of September 1938.

Said orders were published in the FEDERAL REGISTER under date of August 23, 1938, and copies of said orders were mailed to each of the code members within said districts and to each of the Secretaries of the District Boards within Minimum Price Areas 2, 3, 4, and 5, as directed in said orders.

Order No. 249 directed each of the aforesaid District Boards to propose to the Commission minimum prices f. o. b. transportation facilities at the mines for kinds, qualities, and sizes of coal produced by the code members in their respective districts, and to propose such classification of coal and price variations as to mines, consuming market areas, values as to uses and seasonal demand, as might be deemed proper and within the authority conferred by the Act. This order further provided that each District Board should transmit its schedule of proposed minimum prices to each code member in the district before filing such schedule with the Commission in order to give code members an opportunity of protesting any proposed price classification.

Order No. 249 further directed that the minimum prices proposed by the several district boards should conform to the following standards therefor set out in Section 4 II (a) of the Act:

(a) The proposed minimum prices for each of the aforesaid districts shall yield a return per net ton for such districts equal, as nearly as may be, to the weighted average of the total costs, per net ton, of the tonnage of the minimum price area within which such district is located, as said weighted average heretofore has been determined by order of the Commission dated August 19, 1938, in this proceeding.

(b) They shall reflect, as nearly as possible, the relative market value of the various kinds, qualities and sizes of coal to which they are applicable.

(c) They shall be just and equitable as between producers within the district.

(d) They shall be just and equitable as between producers within the district

for any kind, quality or size of coal for shipment into any consuming market area.

(e) They shall not permit dumping.

Order No. 249 further directed that each schedule of proposed minimum prices submitted by the district boards should include the following clause:

NOTE.—The prices in this schedule are not the final minimum prices that will be established on coal for shipment by code members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices as proposed in such schedule, or as modified, are subject to such increase or decrease, respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

Order No. 250 directed each of the aforesaid District Boards to propose to the Commission reasonable rules and regulations incidental to the sale and distribution of coals by the code members of their respective districts, such rules and regulations not to be inconsistent with the requirements of Section 4 of the Act and to conform to the standards of fair competition therein established. Said order directed said District Boards to transmit such proposed rules and regulations to all code members in order that they would be afforded an opportunity of studying such proposed rules and regulations and of protesting to any of such proposals and to suggest whatever added rules or regulations such code members deemed necessary to properly effectuate the purposes of Section 4 of the Act.

Upon receipt of said orders by the several District Boards within Minimum Price Areas 2, 3, 4 and 5, said District Boards, as directed in said orders, proceeded to propose such minimum prices and marketing rules and regulations as in their judgment conformed to the requirements of said orders. Schedules evidencing such proposals were prepared by said District Boards and copies of same were transmitted to each code member within the respective districts in order that such code members, after due consideration of said schedules, might present to their respective District Boards whatever objections, if any, they might have to said schedules, and in order that the respective District Boards, after due consideration of such objections, if any, might revise such schedules in such manner as, in their judgment, would better conform to the requirements of Orders No. 249 and No. 250, as issued by the Commission, and to the requirements of Section 4 II (a) of the Act.

The schedules of minimum prices, as revised, together with the data upon which same were computed and the schedules of marketing rules and regulations, together with the reasons sup-

porting same, were transmitted to the Commission as directed in said orders.

Subsequent to the receipt of said schedules by the Commission, the Commission, on the 11th day of October 1938, issued its order giving notice to all interested parties of a hearing to be held upon the proposals of minimum prices and marketing rules and regulations as proposed and submitted to the Commission by the District Boards for Districts 9, 10, 11, 12, 13 (except Van Buren, Warren and McMinn Counties in Tennessee), 14 and 15 within Minimum Price Areas 2, 3, 4 and 5, said hearing to be held on the 26th day of October 1938, at the Hearing Room of the Commission, 15th and Eye Streets, N. W., Washington, D. C. As expressed in the face of said order, said hearing was to be held for the purpose of receiving evidence relating to the aforementioned proposals of minimum prices and marketing rules and regulations in order to enable the Commission to approve or modify such proposals to the end that such proposals, as approved or modified, may serve as the basis for the coordination of same as provided in Section 4 II (b) of the Act.

Said order giving notice of said hearing directed the Secretary of the Commission to cause copies of said proposals to be made available for inspection by interested parties at the office of the Secretary of the Commission at Washington, D. C., and at the office of each Statistical Bureau of the Commission within Minimum Price Areas 2, 3, 4 and 5; to cause a copy of said order to be published forthwith in the FEDERAL REGISTER and in two consecutive issues of a newspaper having a general circulation in each of the districts within Minimum Price Areas 2, 3, 4 and 5; and to cause a copy of said order to be mailed to each of the code members within said districts, to the Office of Consumers' Counsel, Washington, D. C., and to the Secretaries of each of the District Boards for the districts within Minimum Price Areas 2, 3, 4 and 5. A copy of said order was also directed to be made available for inspection at each of the Statistical Bureaus of the Commission within said districts.

The aforesaid directions in said order were complied with. A copy of said order was made available for inspection at the office of the Secretary of the Commission at Washington, D. C., and at the office of each of the Statistical Bureaus of the Commission within each of the districts within Minimum Price Areas 2, 3, 4 and 5. A copy of said order was published in the FEDERAL REGISTER of date October 14, 1938, and a copy of said order was mailed to each of the code members within Minimum Price Areas 2, 3, 4 and 5, to the Office of Consumers' Counsel, Washington, D. C., and to each of the Secretaries of the District Boards within Minimum Price Areas 2, 3, 4 and 5. A copy of said order was published in two consecutive issues of The Des Moines Register, Des Moines, Iowa; The

Birmingham News, Birmingham, Alabama; the Illinois State Register, Springfield, Illinois; The Terre Haute Tribune, Terre Haute, Indiana; The Louisville Times, Louisville, Kentucky; The Kansas City Star, Kansas City, Missouri; and the Arkansas Democrat, Little Rock, Arkansas, newspapers having a general circulation in each of the respective districts within Minimum Price Areas, 2, 3, 4 and 5.

Subsequent to the issuance and service of the aforementioned order giving notice of hearing upon the proposed minimum prices and marketing rules and regulations as proposed by the District Boards for Districts 9, 10, 11, 12, 13 (except Van Buren, Warren and McMinn Counties in Tennessee), 14 and 15, the Commission, on the 21st day of October 1938, issued its order giving notice of postponement of said hearing, the date of said hearing being postponed from the 26th day of October 1938 to the 3d day of November 1938.

Said order giving notice of the postponement of said hearing directed the Secretary of the Commission to cause a copy of same to be published forthwith in the FEDERAL REGISTER and in two consecutive issues of a newspaper having a general circulation in each of the aforesaid districts. Said order further directed the Secretary of the Commission to mail a copy of same to each of the code members within Minimum Price Areas 2, 3, 4 and 5, to the Office of Consumers' Counsel, and to the Secretary of each of the District Boards within said Minimum Price Areas. The Secretary of the Commission was also directed to make a copy of said order available for inspection at each of the Statistical Bureaus of the Commission within Minimum Price Areas 2, 3, 4 and 5.

The aforesaid directions in said order were complied with. A copy of said order was published in the FEDERAL REGISTER of date October 25, 1938, and copies of said order were mailed to each of the code members within Minimum Price Areas 2, 3, 4 and 5; to the Office of Consumers' Counsel, Washington, D. C.; and to each of the Secretaries of the District Boards for Districts 9, 10, 11, 12, 13, 14 and 15. A copy of said order was made available for inspection at each of the Statistical Bureaus of the Commission within said districts. A copy of said order was published in two consecutive issues of the Birmingham News, Birmingham, Alabama; The Des Moines Register, Des Moines, Iowa; Illinois State Register, Springfield, Illinois; Arkansas Democrat, Pulaski County, Arkansas; The Terre Haute Tribune, Terre Haute, Indiana; The Kansas City Star, Kansas City, Missouri; and The Louisville Times, Louisville, Kentucky, newspapers having a general circulation in each of the respective districts within Minimum Price Areas 2, 3, 4 and 5.

The Commission on the 29th day of October 1938 issued its order giving notice that the hearing in the matter of

the proposals of minimum prices and marketing rules and regulations as submitted to the Commission by the District Boards for Districts 9, 10, 11, 12, 13 (except Van Buren, Warren and McMinn Counties in Tennessee), 14 and 15 as previously set by order of the Commission for the 3d day of November 1938, at 10 a. m. in the Hearing Room of the Commission at 15th Street and Eye Street, N. W., Washington, D. C., had been separated so as to provide for that part of the hearing relating to Minimum Price Area No. 3 to be held in the City of Washington, D. C., on the 9th day of November 1938 and that part of the hearing relating to Minimum Price Areas 2, 4 and 5 to be held in the City of Chicago, Illinois, on the 14th day of November 1938.

Said order further gave notice that the date for the hearing in the matter of the proposals of minimum prices and marketing rules and regulations as submitted to the Commission by the District Board for District 13 (except Van Buren, Warren and McMinn Counties in Tennessee) as previously set by order of the Commission for the 3d day of November 1938, at 10 a. m. in the Hearing Room of the Commission at 15th and Eye Streets NW., Washington, D. C., had been postponed to November 9, 1938, the hearing to be held at the same hour and place.

Said order also gave notice that the date for the hearing in the matter of the proposals of minimum prices and marketing rules and regulations as submitted to the Commission by the District Boards for Districts 9, 10, 11, 12, 14 and 15 as previously set by order of the Commission for the 3d day of November 1938, at 10 a. m. in the Hearing Room of the Commission at 15th and Eye Streets NW., Washington, D. C., had been postponed to the 14th day of November 1938, said hearing to open at 10 a. m. in the Hearing Room of the Commission in the Morrison Hotel, Chicago, Illinois.

Said order giving notice of the separation and postponement of said hearing directed the Secretary of the Commission to cause a copy of same to be published forthwith in the FEDERAL REGISTER and in a newspaper having a general circulation in Districts 9, 10, 11, 12, 13, 14 and 15. The Secretary of the Commission was further directed to cause copies of said order to be mailed to each of the code members within said districts, to the Office of Consumers' Counsel, Washington, D. C., to the Secretaries of each of the District Boards within Minimum Price Areas 2, 3, 4 and 5, and to make available for inspection a copy of said order in each of the Statistical Bureaus of the Commission within said districts.

The aforesaid directions in said order were complied with. A copy of said order was made available for inspection at the office of each of the Statistical Bureaus of the Commission for each of the districts within Minimum Price Areas 2, 3, 4 and 5. A copy of said order was published in the FEDERAL

REGISTER of date November 1, 1938, and copies of said order were mailed to each of the code members within Minimum Price Areas 2, 3, 4 and 5; to the Office of Consumers' Counsel, Washington, D. C.; and to each of the Secretaries of the District Boards within Minimum Price Areas 2, 3, 4 and 5. A copy of said order was published in two consecutive issues of The Louisville Times, Louisville, Kentucky; the Illinois State Register, Springfield, Illinois; The Des Moines Register, Des Moines, Iowa; The Terre Haute Tribune, Terre Haute, Indiana; The Arkansas Democrat, Little Rock, Arkansas; The Birmingham News, Birmingham, Alabama; and The Kansas City Star, Kansas City, Missouri.

Due and reasonable notice of the separate hearing upon the proposals of minimum prices and marketing rules and regulations as submitted to the Commission by the District Boards within Minimum Price Areas 2, 4 and 5, as postponed, having been given all interested parties, said cause came on for hearing before the Commission on the 14th day of November 1938, at the hour and place as specified in the order of the Commission dated October 29, 1938, to wit, at 10 a. m., in the Hearing Room of the Commission at the Morrison Hotel, Chicago, Illinois; and, after said hearing had been duly and formally opened and all interested parties desiring to appear had entered their appearances in said cause, the Commission proceeded to receive evidence relative to the proposals of minimum prices and marketing rules and regulations as proposed to the Commission by the District Boards for Districts 9, 10, 11, 12, 14, and 15, said hearing being duly concluded on the 6th day of December 1938.

At said hearing all interested parties were afforded full opportunity to be heard on the proposals of minimum prices and marketing rules and regulations which had been submitted by each of the District Boards within Minimum Price Areas 2, 4 and 5. Each of the District Boards within said Minimum Price Areas adduced evidence relating to such proposals and placed into the record as exhibits all of the data which such District Boards had used as a basis for such proposals and each of the District Boards through competent witnesses testified as to the factors which the District Boards had considered in determining the price relationships and the marketing rules and regulations which had been proposed by the District Boards in their respective schedules.

Each of the schedules of proposed minimum prices offered in evidence by the District Boards contained the above clause previously quoted from Order 249 which clearly indicated that the District Boards were proposing minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced in each of the

aforsaid districts without taking into consideration those additional factors and standards which are set forth in Section 4, Part II, subsection (b) of the Act. The minimum prices so proposed, as hereafter approved or modified, will serve as a basis for coordination as provided in Section 4 II (b) of the Act. Such proposals of minimum prices do not take into account differences in transportation methods and charges and their effect upon a reasonable opportunity to compete on a fair basis, or competitive relationships between coal and other forms of fuel and energy as such matters constitute a part of the coordination of minimum prices and are properly a subject of consideration under Section 4 II (b) of the Act.

The Commission, after hearing the evidence adduced with respect to the minimum prices and marketing rules and regulations proposed by the District Boards for Districts Nos. 9, 11 and 12, upon due consideration thereof, and being fully advised in the premises, makes Findings of Fact and Conclusions as follows:

MINIMUM PRICE AREA No. 2—DISTRICT No. 9

PROPOSED MINIMUM PRICES

Soon after the issuance of Order No. 249 of this Commission and conformably to its directions, Bituminous Coal Producers Board for District No. 9, hereinafter referred to as District Board, held a meeting at which it appointed a classification committee of seven members to review all facts and data on the coal produced in District No. 9 by each code member and to report to the District Board its recommendation of proper classifications and proposed prices of such coal. Each member of this committee had not less than twenty years experience in the production and marketing of coal.

This classification committee held its first meeting on August 25, 1938, and subsequently a number of other meetings at various places within the District, and submitted to the District Board a report in the form of a proposed schedule which contained the following: (1) The price instructions and exceptions; (2) the size classifications of coal describing twenty-one size groups; (3) a list of all code members and of their mines in District No. 9 showing the seams and the quality classification by size groups for all uses; (4) a list of proposed prices in cents per net ton of 2,000 pounds for each kind, quality and size of coal so classified for shipment into all market areas; and (5) a description of eighteen market areas by states.

The District Board then adopted the report of the classification committee and, at a meeting held September 30, 1938, it sent a copy of this proposed schedule to each code member in District No. 9 with a memorandum to the

effect that the District Board would entertain protests that might be filed by any dissatisfied code member. The District Board received objections from seven code members operating truck mines in the District with respect to the classifications proposed for them in the schedule of proposed minimum prices transmitted to code members in District No. 9 in compliance with Order No. 249 but none from the code members operating rail mines. Accordingly, the District Board made some modifications in the schedule which were satisfactory to all operators of truck mines.

The schedule of proposed minimum prices, as revised after the disposition of the said objections, hereinafter referred to as the schedule, was unanimously adopted by the District Board after a thorough discussion of all angles and a requisite number of copies thereof were filed by such Board with the Commission in compliance with Order No. 249, and a requisite number of copies thereof were also transmitted by such Board to all code members in the District and to each of the other District Boards. There were no complaints made to the District Board upon this schedule by any code member. This schedule was received in evidence as Exhibit No. 690.

Testimony in support of minimum prices proposed by the District Board was adduced at the hearing before the Commission by two expert witnesses, one of whom is a member of the District Board, and both thoroughly familiar with the marketing and distribution of coals in District No. 9. Their knowledge of District No. 9 was based upon years of experience in the District. It appears that the members of the District Board, seventeen in number, who took an active part in the preparation of the schedule, represent all the various seams and producing subdistricts within District No. 9, and are men who, by reason of the intimate knowledge of their own coals and their general familiarity with their competitors' coals, are fully capable of judging the price differentials and relationships between the kinds, qualities, and sizes of coal produced within the District.

In the schedule of minimum prices proposed by the District Board, the seam in which each code member's mine is located appears following the name of the mine. These seams are No. 9, No. 11, No. 6, No. 12, No. 14, and various stray seams which may be one of the seams herein named and which are all truck mine operations. The mines having coal seams Number 9 and Number 11, have the largest production in District No. 9. Those having coal seams No. 6 and No. 14 have come into production in recent years, and those having coal seams No. 12, the Empire and various stray seams have very small production.

We find that the District Board, among other things, considered the physical characteristics and the uses of the

coal produced in District No. 9. The coal from seam No. 9 is fairly soft and it is suitable for steam and domestic purposes but it is not a special purpose coal. The coal from seam No. 11 is very similar in many respects to the coal from seam No. 9 when it is properly prepared except that it has a parting in it which is not present in the coal from seam No. 9 and this coal is also suitable for steam and domestic purposes. The coals from seams No. 9 and No. 11 are more or less uniform and are generally classified alike. The coal from seam No. 6 is rather soft in structure but due to its peculiar characteristics it is used for steam, domestic and stoker purposes. The coal from seam No. 14 is firm in structure, is the hardest coal in the District, has a distinctive ash of pinkish color, and is generally used for steam, domestic, and stoker purposes.

The approximate tonnage of coal from mines in District No. 9, distributed by the producers therein in 1937, is reported in Exhibit No. 691 as 8,063,453 tons of which 7,729,422 tons or 95.85 per cent were moved by rail and 334,031 tons or 4.15 per cent by truck. It is also shown in the order of volume by specific sizes and classifications that 2,118,536 tons of size 21 Class C coal or 26.27 per cent of the total, 1,359,845 tons of size 16 Class C coal or 16.86 per cent of the total, 1,090,553 tons of size 4 Class C coal or 13.52 per cent of the total, 585,511 tons of size 8 Class C coal, or 7.26 per cent of the total, and 519,821 tons of size 2 Class C coal or 6.44 per cent of the total were then distributed from those mines.

The consuming market areas for the coal produced in District No. 9 are listed in this schedule by states which are: Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Texas, Arkansas, Kansas, Missouri, Nebraska, Iowa, North Dakota, South Dakota, Minnesota, Wisconsin, Illinois, Indiana, and Michigan. The prices proposed are one price into all market areas.

The schedule of the District Board proposes twenty-one size groupings from Size Group No. 1, lump coal 7" lump or larger to Size Group No. 21, run-of-mine, any size resultant over 3"—no fines removed which includes 3¼" x 0", 4" x 0", 5" x 0", 6" x 0", and 8" x 0". All of these size groups are fully described in Exhibit 690. The sizes, which were comparable competitively and which could sell at the same price, were grouped together into one size group. These various size groups have been determined as a result of familiarity that the members of the District Board had with the various operations in the District and with the methods used for the preparation of coal at each mine, marketability and consumer acceptance, and belief that they would not only meet the requirements of each code member but also permit the continuance of all sizes which were being produced in the District.

In determining the proposed variations, or differentials in price among the

various size groups in the schedule, the District Board used a 3-inch lump in Size Group No. 4, a 3-inch by 1¼-inch nut in Size Group No. 8 and 1¼-inch screenings in Size Group No. 16 as base sizes. These specific sizes in the base size groups were used as a starting point and were related as to price to one another according to the practice in more or less regulated markets, and from these three base sizes the comparable values of the various sizes were then worked out and a price placed on each size in proportion to the base coal. A definite charge for subjecting coal of specified sizes to any chemical, oiling, waxing, or washing process was determined by the District Board because such treatment of the coal enhances its value and because the charge for such treatment is customary (page 1 of Ex. 690; page 4 of Ex. 691). It also determined the price differential for a number of producers who are unable to make all sizes of coal at their small rail mines that would enable such producers to market a 3-inch lump coal in competition with 6-inch lump coal and other sizes in proportion. These proposed price variations or differentials among the various size groups were determined by the District Board after it had considered the market practices and the customary differentials and the ability of the code members to market their coal in common consuming markets.

In classifying the coals within each size group as to quality, the District Board took into consideration the analyses of the coals, the seams from which they were produced, the methods employed for the preparation of them at each mine, and the marketability and the consumer acceptance. From the analyses, it was determined that the coals produced from any one seam were generally uniform in quality. Wherever preparation of the coals improved their quality, such coals were classified accordingly higher.

In the schedule proposed by the District Board, the letters are indices as to the price in each size group. The prices are based on the variations in the quality of the coal. The letter "A" represents the highest priced coal in each size group, and the letter "B" represents the next highest priced coal in each size group and the letters "C," "D," "E," and "F," each in descending order, represent a lower price coal in each size group, excepting only coal classified "E" in size group No. 4. Coal from seams No. 9, and No. 11, was taken as a base for the quality classification and was generally classified "C" in the schedule, and, with some exceptions due to any variation in quality occasioned by preparation of it, a uniform price was proposed for it because of the uniform characteristics of the preponderant tonnage of coal from these seams and because of the market practice for years both in the regulated and unregulated market. The coals from seams No. 6 and No. 14 are generally

coals of higher quality than the coals from seams No. 9 and No. 11 due to their peculiar characteristics. The proposed minimum prices of the coal classified as "C" in size groups No. 4, No. 8 and No. 16 were used as bases, and the proposed minimum prices of the other kinds and qualities of coal were determined by relating them to the prices for these base coals. In that connection, the District Board took into consideration the physical characteristics, such as hardness and noticeable structural peculiarities, and the uniformity of the quality of the coals as appears from the analyses that were made by the U. S. Bureau of Mines from samples taken at fifty rail mines that produce 94 per cent of all the coal produced in the District. A copy of the report on these analyses of coal was received in evidence as Exhibit No. 692. Mine run coal from all mines in the District, whether washed or unwashed, was given a uniform quality classification because of its marketability and consumer acceptance among "on-line" railroads, its principal users.

Subsequent to the adoption of the schedule by the District Board and of its submission to the Commission, the District Board, at a meeting held on November 8, 1938, adopted an amendment and supplement to such schedule containing all changes in price classifications due to the erroneous classifications and omissions previously made therein through oversight and clerical error, and submitted such amendment and supplement to the Commission with the instruction that the changes be treated as if they had been originally inserted in said schedule. These changes affect the price classification of forty-one producers in the District that are named as code members in said schedule shown as Exhibit No. 690, and comprise one in Size Group No. 7, thirty-three in each of Size Groups Nos. 10, 11, and 12, six in Size Group No. 15, and one in Size Groups 1 to 21, inclusive. A copy of the amendment was received as Exhibit No. 693.

The total tonnage of the various classifications and size groups of coal of District No. 9 based on the distribution thereof will yield an average realization of \$1.7782 per ton which was computed by applying the prices proposed by the District Board to the tonnages of coal reported in Commission's forms D-1 and D-2 for the year 1937, broken down into size groups and classifications. The report containing data on this realization was received in evidence as Exhibit No. 691.

And now, therefore, upon the record in this cause, upon the evidence both documentary and otherwise, on file with this Commission, and upon the above and foregoing facts found to exist, we find:

I. Protest

At the hearing the Sentry Coal Mining Company filed a protest and adduced testimony relating thereto. This protest was directed against: (1) a proposed

differential in price between 6" and 7" Lump coal; (2) a proposed differential in price between 3" Lump coal and 7" x 3" Egg coal; (3) a proposed differential in price between 1½" x 0 screenings and 1¼" x 0 screenings; (4) a proposed differential in price between washed and unwashed coals in Size Group 9; and (5) a proposed classification of protestant's coals of its Sentry Mine in District No. 9 in a higher price classification bracket than the coals of other rail mines operating in seams No. 9, seams No. 11, and other seams No. 14. The protestant requests a price classification "C" for all sizes from Size Group 1 through Size Group 21, instead of the classifications "A" for all sizes from Size Group 1 through Size Group 7, and "B" for all sizes from Size Group 8 through Size Group 19, which have been proposed by the District Board.

With reference to the proposed differential in price between 6" x 7" Lump coal and to the proposed differential in price between 3" Lump coal and 7" x 3" Egg coal, the evidence discloses that the protestant passes this coal over both a 6" and 7" screen because, due to the pitch at which the screens are set and the speed at which they are operated and also due to the quantity of coal passed over the screens, such use of the two screens is necessary for the protestant to produce a coal that is comparable to a 6" Lump coal or a 6" x 3" Egg coal. The protestant did not admit producing a 7" Lump coal, but did admit that in some cases the producer of coal that has passed over a larger screen has an advantage, that double screened coals are more uniformly sized coals, and that these coals are not necessarily used for the same purposes.

However, the schedule of the District Board was submitted to this Commission after a full and careful consideration by and a unanimous judgment of its members as herein appears more fully and in that schedule it proposes the highest price for the largest coals, and a price differential between the double screened and the single screened coals.

In regard to the proposed differential in price between 1½" x 0 screenings and 1¼" x 0 screenings, it appears that the protestant company produced 1½" x 0 and 1" x 0 screenings at its Sentry Mine, which it priced alike but that it does not produce 1¼" x 0 screenings. However, it is unusual for 1½" x 0 screenings to be made in District No. 9 and the preponderant tonnage of screenings made therein was the 1¼" x 0 size. The only witness for the protestant testified that these coals are generally considered interchangeable and have the same market value, and that the differential in price between them varies according to plant performance. Nevertheless, in the judgment of the members of the Dis-

trict Board, the differential of ten cents (10¢) per ton between these coals was proposed because it reflects the difference in the value of the coals and because it has been customarily maintained in the District as far as possible. The evidence presented by the protestant is not sufficient to warrant this Commission, at this time, to disturb the proposals made by the District Board and the proposed differential in price should be approved for the purposes of coordination.

Concerning the proposed differential in price between washed and unwashed coals in Size Group 9, it appears that the protestant is the only producer who is washing such coal mined in Seam No. 14 in District No. 9. The process of washing coal removes certain impurities from it and thereby enhances its value. The analyses of this washed coal indicate that it is comparable with the coal produced from Seam No. 6, when loaded into transportation facilities, and the Commission, therefore, finds that this coal in Size Group 9 is comparably priced in the price schedule proposed by the District Board and that the differentials in price between the washed and the unwashed coals in this Size Group are proper. This is also true as to the coals in Size Group 8, and the Commission finds that the coals in Size Group 8, when washed, should be priced ten cents (10¢) per net ton more than the unwashed coals of that Size Group.

With respect to the proposed classification of protestant's coals of its Sentry Mine in a higher price classification bracket than the coals of other rail mines operating in Seams No. 9, Seams No. 11, and other Seams No. 14, and with respect to its request for a lower price classification of its coals in Size Group 1 through Size Group 19, the only witness for the protestant testified that, so far as he knows, protestant's coal in raw state from the Sentry Mine in Seam No. 14 is comparable in quality and of the same market value as coal from other Seams No. 14, and that raw coal of similar sizes from the mines in Seams No. 14 is of the same market value as the coal from Seams No. 9 and No. 11. No specific data was furnished by the protestant as to the coals of other rail mines and the report of analysis of the coal presented in evidence is for 1" x 0" slack. However, we find that the quality, the methods of preparation, the consumer acceptance and the marketability of protestant's coal indicate that the price classifications proposed for it by the District Board are correct.

We find and conclude from the evidence in this record as follows: That the District Board for District 9 proposed size groupings that would meet the needs of each and every operator in the District; that the differential in price between 1¼" x 0 and 1½" x 0 coals as proposed by the District Board reflects the

difference in the value as between such coals in all markets; that the washing charge of ten cents (10¢) per ton on coals in Size Groups 9, 10, 11, 12 and 18, reflect the relative value of such coals when washed to the same coals as when unwashed; that a washed charge of ten cents (10¢) per ton is justified on coals in Size Group 8; that the coals of the Sentry Coal Mining Company, Sentry Mine, each classified so as to establish a proper relationship between such coals and other coals produced in the District, and that the evidence adduced by the protestant is not sufficient to justify or warrant changing the size groupings, the price relationship between size groupings, the washing charge of ten cents (10¢) per ton for Size Group 9, or the classification of protestant's coal as the same was proposed by the District Board; and that the protest of Sentry Coal Mining Company should in all particulars be denied.

II. Modifications of the Schedule

That the schedule of classifications and minimum prices proposed and submitted to the Commission and received in evidence as Exhibit No. 690 should be amended as is hereinafter stated:

On the front cover page thereof the statement which reads as follows:

"After further deliberations of the Bituminous Coal Producer's Board for District No. 9, at a meeting held at Madisonville, Kentucky, October 10, 1938, this is the final proposed price schedule and contains all changes."

should be deleted because it is superfluous and does not serve any useful purpose now due to the fact that amendments, changes, and supplements to said proposed price schedule were proposed and submitted to the Commission by the District Board.

On the front cover page thereof the statement which reads as follows:

"NOTE 'A'.—The prices in this schedule are not final minimum prices that will be established on coal for shipment by code members within the district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices as proposed in such schedule, or as modified, are subject to such increase or decrease, respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act."

should be deleted and the following paragraph substituted therefor for the purposes of standardization:

"NOTE.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this District into consuming markets of this district. In the ultimate establishments of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease, respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act."

On the front cover page thereof the statement which reads as follows:

"NOTE 'B'.—The prices in this schedule are proposed to reflect the classification and value relationships of the various kinds and sizes of coal produced within the district. The level of prices may be varied to comply with the requirements of subsection (a) of Part II, Section 4 of the Act relating the prices to the weighted average of the total cost of the Minimum Price Area.

"The level of prices will subsequently be varied in various consuming markets to meet the requirements of subsection (b) of Part II, Section 4 of the Act relating to coordination and to competitive relationships between coal and other forms of fuel and energy."

should be deleted because the same is not properly applicable on a proposal of prices under Section 4, Part II (a) of the Act.

Item 6 of "Price Instructions and Exceptions" on page one of said schedule should be deleted and the following instructions should be substituted therefor so as to include size group 8:

"6. All washed coal in Size Groups 8, 9, 10, 11, 12, and 18, shall be priced ten cents per ton higher than unwashed coal of the same size in all Market Areas."

Item 8 of "Price Instructions and Exceptions" on page one of said schedule should be deleted and the following instructions should be substituted therefor:

"8. If any size of coal is made for which a price is now designated herein, such sizes shall be priced as follows: lump coal shall be applied to the next higher size group applicable to lump; double screened coal shall be applied to the next higher size group applicable to double screened, except egg coal larger than designated in size group 3 shall take size group 2 price."

On page two of said schedule, under the title of "Size Groups" the symbol (") which is used to designate an inch and which precedes the word "mesh" in the descriptions of Size Groups 10, 11, 12, and 18, should be deleted so that the word "mesh" wherever it appears in the hereinbefore mentioned places, be and remain without any size symbol describing it, and the descriptions of said size groups should read as follows:

"10. Chestnut.—Top size not over 1½", bottom size 1" to 6 mesh. (Includes 1½" x 1", 1¼" x 1", 1½" x ¾", 1¼" x ¾", 1½" x ¾", 1¼" x ¾", 1½" x ¾, 1¼" x ¾, 1½" x 6 mesh, 1¼" x 6 mesh.)

"11. Pea.—Top size not over 1", bottom size ¾" to 6 mesh. (Includes 1" x ¾", ¾" x ¾", 1" x 6 mesh, ¾" x 6 mesh.)

"12. Modified Screenings.—Must pass over screen 10 mesh or smaller. (Includes 1½" x 10 mesh; 1¼" x 10 mesh; 1" x 10 mesh; ¾" x 10 mesh, 1½" x 20 mesh, etc.)

"18. 1½" x 10 mesh or smaller, ¾" x 10 mesh or smaller."

On page four of said Schedule "Alphabetical List of Code Members Showing Price Classifications by Sizes of All Uses

except as Separately Shown" for R. A. Bridges (Bridges Coal Company)—Seam No. 14, in columns of Size Groups 1 to 21, both inclusive, Classifications A should be deleted and the Classifications C substituted therefor conformably to the approval of the District Board.

On page five of said Schedule "Alphabetical List of Code Members Showing Price Classifications by Sizes of All Uses except as Separately Shown" for C. & P. Mining Company—for Seam No. 6 in column of Size Group 7, the Classification B should be deleted and the Classification C substituted therefor conformably to the approval of the District Board.

On page seventeen of said Schedule "Alphabetical List of Code Members Showing Price Classifications by Sizes of All Uses except as Separately Shown" for Trio Coal Company of Kentucky—Seam No. 11, in column of Size Group 7, the Classification C should be deleted and the Classification D substituted therefor conformably to the approval of the District Board.

On page seventeen of said Schedule, "Alphabetical List of Code Members Showing Price Classifications by Sizes for All Uses except as Separately Shown" for Victory Coal Company—Seam No. 11, in column of Size Group 7, the Classification C should be deleted and the Classification D substituted therefor conformably to the approval of the District Board.

On page twenty of said Schedule, "Prices for Shipment into all market areas," the decimal points appearing in the price figure 1.90 Size Groups 5 and 6 of Classification D and in the price figure 1.85 in Size Group 21 of Classification C should be deleted so that the corrected price figures then read and be 190 and 185.

Conformably to the approval of the District Board, as shown by an excerpt from the minutes of its meeting which is in evidence as Exhibit No. 693, insert in the said Schedule under the title of "Alphabetical List of Code Members Showing Price Classifications by Sizes of All Uses except as Separately Shown" the additional classifications of the code members for the size groups as the same appear hereinbelow:

Size groups	10	11	12	15
Claude B. Bratcher	C	C	C	*
R. W. Calloway	C	C	C	*
Community Coal Company	C	C	C	*
Connelly Coal Company	*	*	*	C
R. L. Davis	*	*	*	C
Farmers Coal Company	C	C	C	*
Finley & Stovell	C	C	C	*
Graham Hill Coal Company	*	*	*	C
Sherman Hawes	C	C	C	*
Sam Hill	C	C	C	*
A. W. Hodges	C	C	C	*
Jenkins & Patterson	C	C	C	*
O. S. Jernigan	C	C	C	*
Johnson & Embury	C	C	C	*
N. Johnson	C	C	C	*
T. W. Johnson (Johnson Coal Company)	C	C	C	*
Kendall Brothers	C	C	C	*
Noah Kessinger	*	*	*	C
H. L. Kingston	C	C	C	*
Frank Kirtley	C	C	C	*

Size groups	10	11	12	15
Maddox & Baldwin	*	*	*	C
L. E. Maddox (Maddox Coal Company)	C	C	C	*
Mallory Brothers & Sons	C	C	C	*
C. E. Martin	C	C	C	*
Neal McCann	C	C	C	*
J. T. McKinley	C	C	C	*
Scott Millard	*	*	*	C
Montezuma Coal Company	C	C	C	*
B. D. Moore	C	C	C	*
C. H. Moorman (Moorman Mines)	C	C	C	*
Morris, Basel & Arthur	C	C	C	*
Ninth Vein Coal Company	C	C	C	*
Oates & Stanley	C	C	C	*
Lucian Ratliff	C	C	C	*
George H. Rudy & Company Inc.	C	C	C	*
Jesse Sheffield	C	C	C	*
W. H. Stevens & Son	C	C	C	*
Wiley Woodruff (Woodruff Coal Company)	C	C	C	*
Zion Coal Company Inc.	C	C	C	*

III. Conclusions

That District Board No. 9, as directed in Order No. 249 of this Commission, submitted to this Commission a schedule of proposed minimum prices, together with the data upon which they were computed, including but without limitation, the factors considered in determining the price relationship.

That District Board No. 9, as directed in Order No. 249 of the Commission, proposed such classification of coal and price variations as to mines, consuming market areas, values as to uses as are deemed proper and within the authority conferred by the Bituminous Coal Act of 1937, but without having taken into consideration price variations as to the values as to seasonal demand.

That District Board No. 9, as directed in Order No. 249 of this Commission, proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced by the code members in District No. 9.

That the minimum prices as proposed by District Board No. 9 in its schedule as amended are such as to yield a return of \$1.7782 per net ton for District No. 9 equal as nearly as may be to the weighted average of the total costs of \$1.772 per net ton as determined by this Commission, of the tonnage of Minimum Price Area 2 within which District No. 9 is included under the Act.

That the average realization of \$1.7782 per net ton is not affected by the corrections, changes or modifications in the classification of coal produced by code members in District No. 9 as recommended herein.

That the minimum prices proposed by District Board No. 9 as they appear in its schedule, as revised and as herein modified, reflect, as nearly as possible, the relative market value of the various kinds, qualities, and sizes of coal produced within District No. 9; they are just and equitable as between producers within District No. 9; they are just and equitable as between producers within the District; they have due regard to the interests of the consuming public; they

are just and equitable as between producers within the District for any kind, quality, or size of coal for shipment into any consuming market area; and they do not permit dumping.

That the schedule of proposed minimum prices as amended, corrected, modified and revised, as hereinbefore set forth and as submitted to this Commission by District Board No. 9 conforms to the directions contained in Order No. 249 of this Commission and to the requirements of Section 4—Part II (a) of the Bituminous Coal Act of 1937, and that such schedule as so amended, corrected, modified and revised, a copy of which appears in the appendix for District No. 9 hereto attached, be and the same is hereby approved by this Commission to serve as the basis for the coordination provided for in Section 4—Part II (b) of said Act.

APPENDIX FOR DISTRICT NO. 9

SCHEDULE OF MINIMUM PRICES AS MODIFIED AND APPROVED TO SERVE AS A BASIS FOR COORDINATION

NOTE.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

F. W. McCULLOUGH,
Secretary.

Issued: February 2, 1939.

Price Instructions and Exceptions

1. The schedule of prices shown herein applies f. o. b. transportation facilities at mines on all coal produced by Code Members in the District shown above.

2. All prices are subject to the Marketing Rules and Regulations issued by the National Bituminous Coal Commission.

3. All size designations herein are for round hole screens. When other types of screens are used the round hole equivalent shall control the size.

4. All prices herein are per net ton of 2,000 lbs. f. o. b. transportation facilities at the mines unless otherwise designated.

5. When coal is subjected to any chemical, oil or waxing process, an additional charge of not less than 10 cents per net ton shall be made.

6. All washed coal in size groups 8, 9, 10, 11, 12 and 18 shall be priced 10 cents per net ton higher than unwashed coal of the same size in all Market Areas.

7. All washed coal in size groups 13, 14, 15, 16, 17, 19, and 20 shall be priced 25 cents per net ton higher than unwashed coal of the same size in all Market Areas.

8. If any size of coal is made for which a price is not designated herein, such size shall be priced as follows: Lump coal shall be applied to the next higher size group applicable to Lump; Double

Screened coal shall be applied to the next higher size group applicable to double screened, except Egg coal larger than designated in size group 3 shall take size group 2 price.

9. Any mine or any size group of a Code Member whose mine classification is not shown herein shall take the same classification as mines operating in the same seam.

10. Mines classified D in size groups 1, 2, 3, 4, and 7 covers sales of coal for domestic purposes only. When coal is sold for steam purposes, mines classified D in size groups 1, 2, 3, 4, and 7 shall charge the same price as mines classified C in all size groups.

Size Groups

Sizes of Coal

Group No. 1. 7" Lump or larger.

Group No. 2. 6" Lump. 5" Lump. 4" Lump.

Group No. 3. Egg—Top size not over 8", bottom size not over 4" (Includes 8" x 4", 8" x 3", 7" x 4", 7" x 3").

Group No. 4. 3" Lump. Egg—Top size not over 6", bottom size not over 4", (Includes 6" x 4", 6" x 3½", 6" x 3", 5" x 4", 5" x 3", 4" x 3").

Group No. 5. 2" Lump. 1½" Lump. 1¼" Lump. Egg—Top size not over 6", bottom size not over 2½". (Includes 6" x 2½", 6" x 2", 6" x 1½", 6" x 1¼", 6" x ¾", 5" x 2", 5" x 1½").

Group No. 6. Egg—Top size not over 4", bottom size not over 2". (Includes 4" x 2", 4" x 1½", 4" x 1¼").

Group No. 7. Nut—Top size not over 3", bottom size not over 2". (Includes 3" x 2").

Group No. 8. Nut—Top size not over 3", bottom size over 0" but not over 1½". (Includes 3" x 1½", 3" x 1¼", 3" x 1", 3" x ¾", 3" x ½").

Group No. 9. Nut—Top size not over 2", bottom size over 0" but not over 1½". (Includes 2" x 1½", 2" x 1¼", 2" x 1", 2" x ¾", 2" x ½, 2" x ⅜).)

Group No. 10. Chestnut—Top size not over 1½", bottom size 1" to 6 mesh. (Includes 1½" x 1", 1¼" x 1", 1½" x ¾", 1¼" x ¾", 1½" x ⅝", 1¼" x ⅝", 1½" x 6 mesh, 1¼" x 6 mesh.)

Group No. 11. Pea—Top size not over 1", bottom size ¾" to 6 mesh. (Includes 1" x ¾", ¾" x ¾", 1" x 6 mesh, ¾" x 6 mesh.)

Group No. 12. Modified Screenings—must pass over screen 10 mesh or smaller. (Includes 1½" x 10 mesh; 1¼" x 10 mesh; 1" x 10 mesh; ¾" x 10 mesh, 1½" x 20 mesh, etc.)

Group No. 13. Screenings—3" and under but over 2" (top size). No fines removed.

Group No. 14. Screenings—2" and under but over 1½" (top size). No fines removed.

Group No. 15. Screenings—1½" and under but over 1¼" (top size). No fines removed.

Group No. 16. Screenings—1¼" and under but over 1" (top size). No fines removed.

Group No. 17. Screenings—1" and under but over ⅞" (top size). No fines removed.

Group No. 18. ⅝" x 10 mesh or smaller; ¾" x 10 mesh or smaller.

Group No. 19. Carbon ⅞" and under but over ¼" (top size). No fines removed.

Group No. 20. Carbon—¼" and under. No fines removed.

Group No. 21. Run of Mine—Any size resultant over 3". No fines removed. (Includes 3¼" x 0; 4" x 0; 5" x 0; 6" x 0; 8" x 0.)

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted

Code member	Mine name	Seam	Price classifications and size groups																				
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
Adams, Floyd & Coy.	Adams	#6	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Albin, V. M.	Laurence Baize	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Aldridge, J. C.	Black Diamond	Stray	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Allen, Roy E.	Allen	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Andre, James C.	Rhemes	#10	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Anthoston Coal Co., Inc.	Anthoston	#9	C	C	C	C	C	C	C	B	B	C	C	C	C	C	C	C	C	C	C	C	C
Alvey Bros.	Alveys	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Alvey, H. H. (Alvey Mines).	Alvey Mines	#9	D	D	D	D	D	D	D	E	E	C	C	C	C	E	E	E	E	C	C	C	C
Alvey, Odus	Alvey	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Atkinson, Leland	Atkinson	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Ayers & Browning	Chamberlain	#9	D	D	D	D	D	D	D	E	E	E	C	C	C	C	E	E	E	E	C	C	C
Babb, Lee	Babb	#11	D	D	D	D	D	D	D	E	E	E	C	C	C	C	E	E	E	E	C	C	C
Bailey, W. A.	Bailey's	#6	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Baize, C. T.	Baize	Stray	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Baker & Thomson (Estil Baker).	Baker & Thomson	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Baldwin, L. W.	Baldwins	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Barnes, Austin	Rector Kirkwood	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Barrow, Elbert	Melton #1	#14	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Barton, B. B.	Barton	#9	D	D	D	D	D	D	D	E	E	E	C	C	C	C	E	E	E	E	C	C	C
Beadnell, G. C.	Beadnell	#9	D	D	D	D	D	D	D	E	E	E	C	C	C	C	E	E	E	E	C	C	C
Beaver Dam Coal Co.	Taylor	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Beech Creek Coal Co.	Beech Creek	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Belcher, C. A.	Elmer Cardew	#9	D	D	D	D	D	D	D	E	E	E	C	C	C	C	E	E	E	E	C	C	C
Belcher, T. N.	Belcher	#9	D	D	D	D	D	D	D	E	E	E	C	C	C	C	E	E	E	E	C	C	C
Beloat, Bennett & C. G. Morris.	Beloat & Morris	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Bennewitz Bros.	Hatcher	#14	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Bennewitz, Louis	Muhlenberg C. Co.	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C

*Denotes rail mines.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

*Denotes rail mines.

*Denotes all mines.

Alphabetical List of Code Members Showing Price Classification by Sizes for All
Uses Except as Noted—Continued

			Price classifications and size groups																							
Code member	Mine name	Seam	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21			
Long, Dick & Charlie	Needmore	#8	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Long, Thomas O. & Chester Barnes	Pennywinkle	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
*Louisville Gas & Elec. Co.	Echols Mine	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Lovan, G. V.	Lovan	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
*Low Vein Coal Co.	Low Vein (Empire)	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Lucas & Lucas	Lucas	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Lucas, C. O.	Lucas	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Lucas, Lawson	Hankins	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Luton, C. B.	Gem	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
*Luzerne-Graham Mining Corp.	Luzerne	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
*Luzerne-Graham Mining Corp.	Graham	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Maddox & Baldwin	Maddox & Baldwin	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Maddox, L. E. (Maddox Coal Co.)	Maddox Coal	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Mallory Bros. & Sons	Dwyer	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Mallory, Melvin	Mallory	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Manire, B. L.	B. L. Manire	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
*Maple Creek Coal Co.	Maple Creek	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Marks, Ross & J. C. Nisbett	Marks & Nisbett	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Martin, C. E.	Romans	Stray	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Martin, E. Ivan	Martin	Stray	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Martin, Henry C.	Martin Mine	Stray	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Mayes, Nelson, Charlie Blakely	Evitts & Batsel	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
McCaum, Neal	Hamack	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
McCormack, C.	McCormack	Stray	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
McGraw, Robert	McGraw	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
McGuire, Fred	McGuire	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
McKinley, J. T.	Ames	Stray	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
McKinney & Cassey	Finer	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
*Meador, Young & Holt Co.	Fulno	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Medkirk, Coy.	Dogwood	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Melton, Chas.	Melton	Stray	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Melton, T. C.	Ellis #3	Stray	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Merced & Son, J. D.	J. D. Mercer & Son	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Meredith, Kova	Kova	Stray	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Meredith, Ralph	Meredith	Stray	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Merrill & Dillingham	Merrill	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Merrill, Louis	Oak Hill	Stray	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Millard, Scott	Oak Hill	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Miller, T. P.	Millard Mine	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Miller, T. P.	T. P. Miller C. Co.	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Mitchell, Jim	Mitchells	Stray	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Mohon, R. A. & L. R. Bradley	Mohon & Bradley	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Monteruma Coal Co.	Monteruma C. Co.	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Moore, B. D.	Moore	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Moore, Hester	Moore	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Moorman, C. H. (Moorman Mines)	Moorman Mines	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Morris, Basil & Arthur	Morris Bros	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Morris, H. W.	Morris	Stray	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Morris, Mrs. Hettie	Green River C	#14, #12	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Morris, Kermit	Morris	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Morris, L. E.	Horton C. Co.	#14	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Murphy, J. W.	Murphy	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Murray, Arthur C.	Murray C. Murrah	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Murray & Phaup	Oak Hill Mine	#14 & #11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Myers, D. M.	Myers	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Nant, B. C.	Nant	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Nation, John Coal Co.	Nation	No. 2	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Nation, John Coal Co.	Nation	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Nelson, John Coal Co.	Nelson	#9	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
*Nelson Creek Coal Co.	Nelson	#11	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			

* Denotes rail mines.

Description of Market Areas

The States of Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Texas, Arkansas, Kansas, Missouri, Nebraska, Iowa, North Dakota, South Dakota, Minnesota, Wisconsin, Illinois, Indiana, Michigan.

MINIMUM PRICE AREA No. 2—DISTRICT No. 11 (INDIANA)

PROPOSED MINIMUM PRICES

Pursuant to the Commission's Order No. 249, the District Board for District No. 11 prepared a schedule of proposed minimum prices free on board of transportation facilities at the mines for the kinds, qualities, and sizes of coal produced by the Code Members within said District, and such classification of coals and price variations as to mines and consuming market areas, and values as to uses and demands as it deemed fit and proper within the authority conferred by the provisions of the Bituminous Coal Act of 1937. A copy of said schedule was transmitted to each and every Code Member within said District No. 11.

The District Board for District No. 11 received 44 protests against the proposed minimum prices, and each protestant was notified by wire on September 7, 1938, that the Board would hold a regular session September 8 and 9, 1938, in the Terre Haute House, Terre Haute, Indiana, for the purpose of enabling said protestants to present their written and/or oral protests, or to supplement the same.

Of the Code Members who filed protests, representatives of 33 companies or members appeared at the session of the District Board held on the said 8th and 9th days of September, 1938. 11 of such protestants failed to appear. A record of the proceedings of said hearing was caused to be made by the District Board. Thereafter, the Board went into executive session and considered each of the 44 protests, those represented at the above mentioned meeting and also those which were not so represented; 29 of said protests were denied, 4 were fully satisfied, and 11 were partially adjusted and satisfied. The District Board then amended and revised its proposed schedule of minimum prices so as to reflect changes resulting from its action on protests next hereinabove mentioned. The schedule as so amended and revised was mailed to each and every Code Member within said District No. 11. The requisite number of copies so revised and amended as aforesaid and the data upon which the proposed minimum prices were computed and the factors considered in the determination of proposed price relationships, were submitted to the Commission as Exhibit No. 628 and Exhibit No. 630, each of which was received in evidence by the Commission.

After the submission of said schedule of proposed minimum prices, as amended and revised, by District Board No. 11 to the Commission, several protests against the provisions thereof were filed in this proceeding by producer members within said District No. 11, each of which, with the disposition thereof, appears hereinbelow.

The schedule of proposed minimum prices, as amended and revised, by District Board No. 11 was prepared, considered, and adopted by the entire District Board. The managing director, who is also the secretary and treasurer of District Board No. 11; and a member of the Board, and another witness, not a Board member but an officer of a producer Code Member within the District, active as an advisory employee of the Board, each of whom is thoroughly familiar with the marketing and distribution of coals produced in District No. 11, testified in support of said schedule of proposed minimum prices.

Their knowledge of the coals produced in District No. 11, as well as all matters to which their testimony relates, is based upon many years of experience in the production, sale and distribution of the coals of District 11.

District Board No. 11 consists of seventeen members, all of whom have had wide experience in the marketing of Indiana coals. The members of the District Board come from and represent production and transactions in each subdistrict, respectively, into which they have divided the District. They have an intimate collective knowledge of the relative values of all coals produced in each of said subdistricts. As a result of such knowledge, the Board is fully qualified to determine the price differentials and relationships between the kinds, qualities, and sizes of the coals produced within the District.

The following table shows the veins of coal which are mined in the various counties of District No. 11, Indiana:

Veins of Production

Third	Fourth	Fifth	Sixth	Seventh	Brazil Block	Semi Brazil Block	Minshall	Cannel
Clay. Parke. Vigo.	Clay. Davless. Greene. Knox. Martin. Pike. Vermillion. Vigo. Sullivan.	Clay. Davless. Dubois. Fountain. Gibson. Greene. Knox. Martin. Parke. Perry. Pike. Spencer. Sullivan. Vanderburgh. Vermillion. Vigo. Warwick.	Greene. Knox. Spencer. Sullivan. Vermillion. Vigo. Warwick.	Knox. Martin. Sullivan. Vigo.	Clay. Davless. Fountain. Martin. Owen. Parke. Spencer. Vigo.	Clay. Davless. Fountain. Greene. Martin. Owen. Parke. Vigo.	Clay. Fountain. Owen. Vermillion. Vigo. Warren.	Davless. Greene.

The schedule of minimum prices proposed by the District Board divides the production field in District No. 11 into five subdistricts and nineteen county subdistricts, each set identified as shown by the following table:

Subdistrict symbol:	District identification
BC-----	Brazil-Clinton.
LS-----	Linton-Sullivan.
PA-----	Princeton-Ayrshire.
BO-----	Boonville.
EV-----	Evansville.

County number:	County identification
1-----	Clay.
2-----	Davless.
3-----	Dubois.
4-----	Fountain.
5-----	Gibson.
6-----	Greene.
7-----	Knox.
8-----	Martin.
9-----	Owen.
10-----	Parke.
11-----	Perry.
12-----	Pike.
13-----	Spencer.
14-----	Sullivan.
15-----	Vanderburgh.
16-----	Vermillion.
17-----	Vigo.
18-----	Warren.
19-----	Warwick.

As of November 7, 1938, Code Member mines in District No. 11 were as follows:

Subdistricts	Symbol	Number rail mines
Brazil-Clinton.....	BC	28
Linton-Sullivan.....	LS	45
Princeton-Ayrshire.....	PA	14
Boonville.....	BO	6
Evansville.....	EV	2
Total rail.....		95

County:	Number of truck mines
Clay.....	70
Davless.....	19
Dubois.....	9
Fountain.....	28
Gibson.....	1
Greene.....	44
Knox.....	13
Martin.....	33
Owen.....	8
Parke.....	43
Perry.....	38
Pike.....	29
Spencer.....	31
Sullivan.....	24
Vanderburgh.....	1
Vermillion.....	37
Vigo.....	54

County—Continued.	Number of truck mines
Warren.....	3
Warrick.....	67
Total truck.....	552
<i>Recapitulation</i>	
Rail Mines.....	95
Truck Mines.....	552
Total.....	647

The production by subdistricts in District No. 11 for rail mines and by counties for truck mines during the calendar year 1937 shows the following:

Rail Mines

Subdistricts	Production	Percent
Brazil-Clinton.....	3,018,295	19.37
Linton-Sullivan.....	6,335,617	40.65
Princeton-Ayrshire.....	5,032,304	32.29
Boonville - Evansville (Combined).....	1,199,172	7.69
Total rail mines.....	15,585,388	100.00

Truck Mines

Counties	Production	Percent
Clay.....	327,586	25.91
Daviess.....	56,095	4.44
Dubois.....	25,886	2.05
Fountain.....	40,582	3.21
Gibson.....	8,786	.69
Greene.....	70,475	5.57
Knox.....	155,544	12.30
Martin.....	19,874	1.57
Owen.....	2,081	.16
Parke.....	126,720	10.02
Perry.....	16,852	1.33
Pike.....	44,794	3.54
Spencer.....	13,304	1.05
Sullivan.....	32,183	2.55
Vanderburgh.....	65,667	5.19
Vermillion.....	135,777	10.74
Vigo.....	2,548	.20
Warren.....	119,533	9.48
Warrick.....	119,533	9.48
Total truck mines.....	1,264,587	100.00

Recapitulation

	Production	Percent
Total Rail Mines.....	15,585,388	92.50
Total Truck Mines.....	1,264,587	7.50
Grand total.....	16,849,975	100.00

The reason why no symbols are used for subdistricts for truck mines is that the boundaries of the subdistricts for rail mines conform to the groupings thereof for rate making purposes and it is impossible to determine with any degree of certainty the producing subdistricts in which many of the truck mines could be properly located. Therefore, instead of using a subdistrict symbol for truck mines, the District Board has indicated by numeral references the counties in which such mines are situated, as explained at page 8 of the proposed price schedule (Exhibit No. 628), and as above herein shown.

The tonnage of coal produced in 1937 by the rail and truck mines in District No. 11 from the various seams is shown in the following table:

Veins of coal	Rail mines		Truck mines		Combined	
	Tons	Percent	Tons	Percent	Tons	Percent
3 (III).....	981,696	6.30	51,423	4.07	1,033,119	6.13
4 (IV).....	2,616,228	16.79	136,473	10.79	2,752,701	16.34
5 (V).....	9,971,817	63.98	306,024	24.20	10,277,841	61.00
6 (VI).....	1,214,305	7.79	283,828	22.44	1,498,133	8.89
7 (VII).....	7,640	.05	10,194	.81	17,834	.11
Block.....	793,702	5.09	312,154	24.68	1,105,856	6.56
Semi-Block.....			46,239	3.66	46,239	.27
Minshall.....			111,235	8.80	111,235	.66
Cannel.....			7,017	.55	7,017	.04
Total.....	15,585,388	100.00	1,264,587	100.00	16,849,975	100.00

About 92.50 percent of the total production during the calendar year 1937 was by rail mines and approximately 7.50 percent by truck mines.

During its deliberations, the District Board appointed four committees to assist it in the classification and pricing of the coals produced within the District. Three of such committees, and each of them, considered and recommended, for all sizes above 2 inches, classification and prices in the following order:

Committee No. 1 for Brazil Block Vein, Semi-Brazil Block Vein, and Minshall Vein.

Committee No. 2 for 5th (V) Vein Seam.

Committee No. 3 for 3rd (III), 6th (VI) and 7th (VII) Veins.

Committee No. 4 considered and recommended price differentials for all coal 2 inches and smaller for the entire District. All committee members, with one exception, were District Board members. The exception was Mr. O. L. Scales, a member of No. 4 Committee, who is an outstanding authority on Indiana coals.

All actions taken were approved by vote of the Board, and when it had finally concluded all of its deliberations, all previous actions were approved in and by a resolution adopted in the premises (Exhibit No. 629 in evidence).

With respect to base coal, with which comparisons of all other coals were made, the quality index of "E" was assigned by the Board to the base coal in all size groups. This letter "E" was selected so as to leave sufficient indices for higher and lower quality coals. In all previous classifications and coordinations, under N. R. A., the Act of 1935, and the present Act, the group of mines producing the base coal selected was, in every instance, approved and used as the base group. With this determining factor as a guide, the 4th (IV) Vein coal in the Brazil-Clinton subdistrict was selected by the District Board as the base coal. The mines producing such coal are shown in Exhibit No. 641, as Mine Group No. 1.

The District Board divided the rail shipping mines in District No. 11 into fourteen groups, Nos. 1 to 14, inclusive, thus:

(1) The mines in Group No. 1 (base) are Binkley Mining Company's Miami No. 10; Clinton Coal Company's Submarine No. 2; Saxton Coal Mining Company's

Saxton Mine No. 1. These three mines produce the best quality of 4th (IV) Vein coal, in all sizes, in District No. 11. All sizes are classified as "E."

(2) Group No. 2 of this classification includes only the Bardyke Mine of Snow Hill Coal Corporation. The coal produced by this mine is identical in quality, in all sizes, with the coal of Group No. 1, and were it not that it is equipped with a washer, would bear the same classification in all sizes. But for this reason Size Bracket 8 is given "F" classification.

(3) Price differentials between Group No. 1 and Group No. 3 coals are found only in Size Brackets 7, 10, 11, 13, 16, and 17, all of which relate to coal under 2 inches. The mines in this No. 3 Group are all in the Linton-Sullivan subdistrict and, because of characteristic dirty bands, produce an inferior quality in the raw sizes under 2 inches.

(4) The coal produced by the two mines in Group No. 4 is identical with that produced in Group No. 3, but some sizes are washed.

(5) Group No. 5 includes eight mines, all of which produce coal in Vein No. 5 (V), with the single exception of Snow Hill Coal Corporation's Talleydale Mine, which produces in No. 3 (III) Vein. The mines of this group are considerably scattered, producing in the Boonville, Princeton-Ayrshire, and Linton-Sullivan subdistricts. The coal of this group has a more limited market than has the base coal. The B. t. u. per pound is comparable with that of the base coal. The market limitation mentioned is due to low fusion temperature in ash and the high sulphur content appearing in all sizes, resulting in a lowered level of value for steam and industrial purposes. For domestic sizes the volatile matter is generally within 5 or 6 per cent of the total fixed carbon, making for a low fixed carbon-volatile matter relationship. This results in extremely dirty and smoky burning conditions in domestic application, lowering very greatly the market value of sizes in Size Brackets 1 to 6 for domestic application in certain market areas, and entirely prohibiting sales in others.

(6) Mine Group No. 6 includes four mines, all in Linton-Sullivan subdistrict and producing in Vein No. 6 (VI). This varies in some essential qualities from the base coal (Group No. 1, Seam No. 4), as well as from the Group No. 5 coal. In Size Brackets 1 to 3, inclusive, are shown

the sizes sold almost exclusively for domestic application. Coals produced at these 4 mines, in these Size Brackets have qualities not possessed by the base coal and most other coals in the State—District No. 11. The lump and egg in these sizes are black and shiny, presenting a homogeneous mass of apparently good quality. The ash content compares favorably with the base coal, having burning characteristics which provide, in domestic application, what is known as clean burning coal, relatively free from soot and other undesirable features. It burns as dry and more freely than does the base coal. It has a better appearance, but it has a somewhat higher sulphur content, though not sufficient to render it objectionable in domestic application.

(7) Mine Group No. 7 includes 6 mines, 5 in Brazil-Clinton subdistrict and one in Linton-Sullivan subdistrict. There are 3 producing in Vein No. 6 (VI) and 3 in Vein No. 3 (III). Market and price history, general burning characteristics, and all other pertinent data indicate that coal from these mines, in Size Brackets 1 to 6, inclusive, should be priced 10 cents per ton below the coals from Group No. 5, with which they are in active competition, establishing thereby a relationship of 35 cents per ton lower than classification "E," which is the base coal. These are therefore classified as "L." In Size Brackets 7 to 17, inclusive, excepting washed sizes which are not produced at any of the mines in this group, analyses, general price and market history, and all other data presented by the Board, indicate that these sizes should bear the lowest relative price of any coal produced in District No. 11. Therefore, classification "K" was assigned to these last mentioned sizes, being 30 cents per ton below the same sizes in the base coal.

(8) Mine Group No. 8 includes eight mines, one producing in Vein No. 4 (IV), six in Vein No. 5 (V) and one in Vein No. 7 (VII). Seven of these mines are in the Brazil-Clinton subdistrict and one in the Linton-Sullivan. While in some respects widely different in character, the coals from the mines in this group are generally such, as indicated by market and price history, analyses, and other relevant data, that have in the past competed on an equal basis with each other and with the coals from Mine Group No. 5, in Size Brackets 1 to 7, inclusive, and in Bracket 18. It should therefore, bear the same price relationship to the base Group "E" as do the coals in Group No. 5. Size Brackets 10, 11, 13, 16, and 17 belong in the same class as the same sizes produced by mines in Group No. 7. These mines produce coal extremely high in ash and sulphur and of such poor quality as to exclude it from use in most industrial plants. For this reason classification "K" was assigned to these size groups, the lowest in fine sizes.

(9) The two mines which constitute Group No. 9 might well have been placed in Group No. 8, except for the fact that, in the opinion of the District Board, they should be granted the privilege of modifying the coals in Size Bracket No. 11 without extra charge, to provide for them fair competitive opportunity, as, and for the same reasons, explained under Group No. 6.

(10) Mine Group No. 10 consists of 22 mines, all operating in Vein No. 5 (V), of which 7 are in Linton-Sullivan, 9 in Princeton-Ayrshire, 4 in Boonville, and 2 in Evansville subdistricts. The mines in this group produce coal in the raw preparation only, with the exception of the Electric Shovel Coal Corporation's Ayrshire Mine, which air-cleans some sizes. These are the same kinds of coals as those produced by the mines in Group No. 5, and for that reason bear the same relationship to the base coal.

(11) Mine Group No. 11 includes 5 mines producing coals from Vein No. 6 (VI) in the Linton-Sullivan subdistrict. So far as Size Brackets 1 to 7, inclusive, are concerned, the same condition exists and the same facts apply to coal from mines in this group as that from mines in Group No. 6, except for the presence of washers in No. 6 Group mines.

(12) Mine Group No. 12 includes but two mines. They operate in Vein No. 5 (V) in the Linton-Sullivan subdistrict. The seam is of the same geological age as that in which Group No. 10 and Group No. 5 operate, yet, the mines in this group produce coal of an entirely different character, appearance, and performance properties. In the Size Brackets 1 to 3, inclusive, these two mines produce coals which, in analysis, appearance, customer acceptance, and other relevant factors, are superior to the base coal. For this reason the Board evaluated the same by assigning classification "C" to these size brackets, which is 10 cents per ton higher than the base coal. In Size Brackets 4 and 5 the difference in value is somewhat less marked, but is still superior to the base coal, and that superiority was evinced by assigning these sizes to classification "D." Size Brackets 6, 7, 8, 10, 11, 12, 13, 16, and 17 have identical application as to uses as the base coal. They are similar in analyses, have approximately the same sulphur content, market and price history. Therefore, they are classified as equal to the base coal in these brackets. In Size Bracket 18, run-of-mine, produced by Group No. 12 mines, is somewhat coarser than the same of the base coal, but approximately of the same analysis, has generally the same application, and, because of the size consist, was assigned classification "D."

(13) Mine Group No. 13 contains only one mine in Vein No. 5 (V), Princeton-Ayrshire subdistrict. In Size Bracket 1,

a purely domestic size, this coal is in all respects superior to the base coal of that size, being comparable with the coals produced by mines in Group No. 12. Therefore, it was classified as "C." This superiority carries over into Size Brackets 2, 3, and 4, but to a much lesser degree. Hence, these sizes were assigned classification "D." In Size Brackets 5 and 6, the appearance and analytical properties, except for sulphur content and fusion temperature of the ash, are superior to the base coal. They were therefore assigned the same classification as the base coal in these sizes. Size Brackets 7 to 16, inclusive, are all differently related to Size Bracket 11. In these size brackets the volatile matter-fixed carbon relationship and B. t. u. content are more favorable, in comparison, than the base coal. However, the sulphur content and fusion temperature of ash limit its adaptability. These facts, together with market and price history, indicated a value 5 cents per ton below the base coal, and were therefore assigned classification "F." Size Brackets 17 and 18, because of the comparative absence of impurities in the seam, were found to be equal to the base coal in these sizes and were also given classification "E."

(14) Mine Group No. 14 is composed of 23 mines, all operating in the Brazil Block and Semi-Brazil Block Vein or seams. Only one mine, the Hoosier-Queen of Possum Hollow Coal Company, operates in the Semi-Brazil Block; of the other 22, all are in the Brazil Block. Twelve of these mines are in the Brazil-Clinton, ten in the Linton-Sullivan and one in the Boonville subdistricts. The coals from this vein have very little, if any, relationship to other coals produced in District No. 11 from the standpoint of physical, chemical, and burning properties. In Size Bracket No. 1, because of favorable burning qualities, market and price history and customer preference, the Board placed upon this coal a valuation 10 cents in excess of the base coal. In Size Brackets 2 to 7, inclusive, the coals have, over a long period of years, sold at the same prices as these sizes in the base coal produced at mines in Size Group No. 1. Therefore, the same classification was assigned as in the base coal. Size Brackets 10 and 11, by reason of peculiar fracture whereby it contains excessive fines and also because of the large amount of clay, as well as lack of uniformity in analyses, were assigned "G" classification, 10 cents per ton below that of the base in these sizes. Because of their limited application, together with extremely high moisture and ash, the District Board, for Size Groups 13, 16, and 17 evaluated the coals in these sizes with the lowest classification in the District and assigned them classification "K". Size Bracket 18 coal, because of analysis and size consist, was assigned classification "E," as being equal to the base coal.

The District Board included in each size group a standard size of coal to which each of the other sizes in the particular

group is related. The following table shows the size in each size group adopted by the District Board as a standard:

Size Groups

1	2	3	4	5	6
6" Lump.....	6 x 4.....	6 x 3.....	4 x 2.....	6 x 1½.....	2 x 1½.
7	8	9	10	11	12
1¼ x ¾.....	1¼ screenings washed or air-cleaned.	1¼ screenings water dedusted.	1¼ screenings Modified.	1¼ screenings Raw.	¾ minus washed or air-cleaned.
13	14	15	16	17	18
¾ x 10 Mesh Raw.	¾ or less x 10 Mesh Water Dedusted.	¾ or less x 28 Mesh Water Dedusted.	10 Mesh or less x 0 Raw.	¾ or less x 0 Raw.	Mine Run.

Production by rail shipping mines in District No. 11 during the calendar year 1937, by Mine Groups Nos. 1 to 14, inclusive, is reflected in the following tabulation:

Classification	Production	Percent.
Group No. 1.....	920,346	5.91
Group No. 2.....	(1)
Group No. 3.....	1,133,614	7.27
Group No. 4.....	192,452	1.23
Group No. 5.....	3,676,251	23.59
Group No. 6.....	964,518	6.19
Group No. 7.....	342,387	2.20
Group No. 8.....	869,216	5.53
Group No. 9.....	184,842	1.18
Group No. 10.....	4,930,035	31.63
Group No. 11.....	223,335	1.43
Group No. 12.....	461,182	2.96
Group No. 13.....	894,508	5.74
Group No. 14.....	738,702	5.09
Total.....	15,585,388	100.00

¹ Did not operate in 1937.

Similar data were not obtainable for truck mines during the year 1937.

Coals produced at off-rail or truck mines are arranged by counties. All mines in each county that have the same classification for the same sizes of coal are included in the same group. Thus, for example, the mines in Clay County are included in four groups. The mines in each of the four groups have the same price classification. Proposed prices and differentials are shown by the tabulation received in evidence as Exhibit No. 642. At page 18 thereof, Item 1 shows the proposed prices of the base coal to which the rail and truck mine prices are related. In each of the Items 2 to 11, inclusive, are included the proposed prices for the coals of the mines which have been assigned the same classification. The coals produced at all of the off-rail mines are given the same classification as the rail shipping mines in the same veins.

The District Board obtained data showing that agreeably to size grouping and

classification proposed (Exhibit No. 628) 120 such proposed sizes were produced by the mines in this District, in the raw state. Rail mines produced a total of 88 such sizes and truck mines a total of 76 such sizes. From the same source (Exhibit No. 644) it appears that 25 of the sizes produced were washed or treated at rail mines. None was washed or treated at truck mines.

During the early part of the year 1938, the District Board employed a very competent firm of engineers and chemists to sample and analyze certain sizes of coals in the several veins in District No. 11. Samples were taken of all the rail mines that were in operation at the time of sampling. Screen tests, for size consist, were also made from the samples taken by the engineering and test company and, as directed by Order No. 235 of the Commission, were filed with the Commission by the District Board as the same were received from the engineering company. Such data, along with the analyses obtained by the District Board earlier in the year of 1938, were transcribed in a form prepared for that purpose and bound in book form; a copy of the book was made available to each Code Member of the District during consideration by the Board of the proposed minimum prices and classification of coals. A copy of said book was identified, marked Exhibit No. 639, and received in evidence. This book contains a page for each rail mine.

In addition to the analyses shown in and by Exhibit No. 639, the District Board had available other analytical data, some of which were made during the time of the N. R. A. Coal Code and some of which were made during the existence of the 1935 Bituminous Coal Act. A compilation of the N. R. A. analyses was identified and received in evidence as Exhibit No. 640. This includes analyses of screenings and nut coals,

arranged by veins. The numeral above each of the analyses identifies the mine from which the sample analyzed was obtained.

There were available to the District Board data as to all sizes of coal produced by each Code Member in District No. 11; the number of tons of each size; the distribution, as to destination, with respect to commercial sizes, and, in addition, the number of tons of each size of coal sold to trucks and to on-line and off-line railroads. Such data were compiled from information supplied by Forms D-1 and D-2 pursuant to the Commission's Order No. 239. The members of the Board devoted much time and attention to this factual data during all of the Board's deliberations. Aside from and in addition to such factual data, there was also available the expert knowledge of the members of the District Board concerning the relative market values of coals produced in the District.

The District Board determined from the information contained in the D-1 forms for 1937 that the markets in which coals from District No. 11 are consumed embrace the states of Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

A summary of the computation of realization per net ton, based on the application of minimum prices proposed to the Commission by District Board No. 11, as amended at the hearing, is reflected in the following tabulation:

Distribution	Tons	Per ton	Amount
Commercial Coal.....	10,217,994	\$1.6825	\$17,192,180.15
Railroad Fuel-On-line.....	4,041,883	1.9818	8,010,155.45
Railroad Fuel-Off-line.....	933,644	1.85	1,727,241.40
Railroad Power House Coal.....	391,867	1.4076	551,585.90
Total Rail Mines.....	15,585,388	1.7633	27,481,102.90
Truck Mine Sales.....	1,264,587	1.8487	2,337,786.40
Total.....	16,849,975	1.7697	\$29,818,949.30

These figures are based on tonnage distribution for the calendar year of 1937, reported on the Commission's Forms D-1 and D-2, pursuant to Commission Order No. 239. The total tonnage upon which the weighted average realization of \$1.7697 is calculated is 97.57 per cent of the total production of all mines in District No. 11 during the calendar year 1937, as reported by the Division of Research and Statistics of the Commission.

The table of minimum prices proposed by the District Board contains 18 size groups numbered 1 to 18, inclusive, and 13 proposed price classifications from A to M, thus:

Price classification	Prices in cents per net tons of 2,000 pounds and size group numbers																	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
A	260	245	240	230	225	210	195	195	190	185	175	160	145	155	150	95	115	220
B	255	240	235	225	220	205	190	190	185	180	170	155	140	150	145	90	110	215
C	250	235	230	220	215	200	185	185	180	175	165	150	135	145	140	85	105	210
D	245	230	225	215	210	195	180	180	175	170	160	145	130	140	135	80	100	205
E	240	225	220	210	205	190	175	175	170	165	155	140	125	135	130	75	95	200
F	235	220	215	205	200	185	170	170	165	160	150	135	120	130	125	70	90	195
G	230	215	210	200	195	180	165	165	160	155	145	130	115	125	120	65	85	190
H	225	210	205	195	190	175	160	160	155	150	140	125	110	120	115	60	80	185
I	220	205	200	190	185	170	155	155	150	145	135	120	105	115	110	55	75	180
J	215	200	195	185	180	165	150	150	145	140	130	115	100	110	105	50	70	175
K	210	195	190	180	175	160	145	145	140	135	125	110	95	105	100	45	65	170
L	205	190	185	175	170	155	140	140	135	130	120	105	90	100	95	40	60	165
M	200	185	180	170	165	150	135	135	130	125	115	100	85	95	90	35	55	160

The purpose of setting up size groups for the proposal of minimum prices is a mechanical convenience in classifying and pricing various sizes of coal. In District No. 11 a large number of different sizes are produced, many of such sizes have substantially the same market value. Unless grouped, it would be necessary to set up an impracticable number of prices. By grouping sizes, however, that have substantially the same market value, the number of prices can be greatly reduced. None of the mines in District No. 11, as has already been pointed out herein, produce all the sizes; but, taking all the mines together, all of the sizes listed are produced. One reason for the production of so large a number of sizes is because of consumer demand and the effort by producers to attain the broadest possible market for coals. There are also many impurities found in nearly all Indiana coals, which vary largely in quantity and kind. This requires different sizing in many instances to render the product marketable.

In establishing proposals for price differentials, Size Groups No. 1 and No. 11 were selected as base groups. This was deemed necessary for the reason that the coals in Groups No. 1 to No. 6, inclusive, are sold for entirely different purposes than those in Size Groups Nos. 7 to 17, inclusive. The coals in the first six groups are used largely for domestic purposes and in hand fired burning equipment, while those in Size Groups No. 7 to No. 17, inclusive, are mostly used in stoker fired steam generating units.

The proposed differentials for Size Groups Nos. 2, 3, 4, 5, and 6 in relation to the base Size Group No. 1, expressed in cents per ton, lower than No. 1 are as follows:

Size Group No. 2, 15 cents,
Size Group No. 3, 20 cents,
Size Group No. 4, 30 cents,
Size Group No. 5, 35 cents, and
Size Group No. 6, 50 cents.

The proposed differentials for Size Groups 7, 9, 10, 12, 13, 14, 15, 16, and 17 in relation to the base coal, Size Group No. 11, expressed in cents per ton, lower and higher than Size Group No. 11, are as follows:

Size Group No. 7, plus 20 cents,
Size Group No. 9, plus 15 cents,
Size Group No. 10, plus 10 cents,

Size Group No. 12, minus 15 cents,
Size Group No. 13, minus 30 cents,
Size Group No. 14, minus 20 cents,
Size Group No. 15, minus 25 cents,
Size Group No. 16, minus 80 cents, and
Size Group No. 17, minus 60 cents.

These differentials, the District Board represents, are fair and equitable and approximate as nearly as possible the average realization in the average market. They will naturally vary at different times and in different markets, but, in setting up proposed minimum prices, these will be found fair and equitable.

With respect to Size Group No. 8, in relation to the base Group No. 11, a differential was established which requires clarification: In Size Group No. 11 there are five classifications, namely, E, F, G, H, and K, while in Size Group 8 there are but two, namely, H and F. Coals in Size Group No. 11 are raw coals, and there is considerable variation in quality between the products of various mines, which necessitates the five classifications. The coal in Size Group No. 8 is washed or air-cleaned, and it was found that the resultant product, after such special treatment, had much less variability than the same coal had in the raw state. The differentials proposed for the two classifications in Size Group No. 8 are respectively plus 5 cents and plus 15 cents over the "E" classification of Size Group No. 11.

Size Group No. 18 bears no relation to the base coals, Size Groups No. 1 and No. 11. Size Group No. 18 is mine-run and was classified according to value at the several mines. The proposed prices were established on this size group approximately as near as possible to average cost in Minimum Price Area No. 2, namely, \$1.772.

The District Board proposed 14 price instructions and exceptions, all of which appear on pages 3 to 5, inclusive, (Exhibit No. 628), with corrections herein-after noted. Item 3 thereof declares that:

"All size designations herein are for round hole screens. When other types of screens are used, the round hole equivalent shall control the size."

It was, however, suggested by the evidence that a more accurate statement of the purpose and intention of the Dis-

trict Board by the provisions of this item should read as follows:

All size designations herein are for round hole screens, except when otherwise designated. When other types of screens are used, the District Board, subject to approval by the Commission, shall determine the actual size designation of coal so prepared.

Item No. 4 at page 3 of the said schedule, Exhibit No. 628, reads as follows:

"All prices herein are per net ton of 2,000 pounds f. o. b. transportation facilities at the mines, unless otherwise designated."

As all minimum prices proposed by the District Board are on a basis of cents per net ton f. o. b. transportation facilities at the mines, the witness for the District Board suggested that this item be corrected and clarified by substituting the following provisions for the item as above quoted:

The prices herein are in cents per net ton of 2,000 pounds f. o. b. transportation facilities at the mines.

Item No. 13 of the proposed schedule of prices originally provided that:

"Washed, Air-cleaned, Water-screened or Water-dedusted Nut and Stoker Coals:

"When the nut and stoker coals in Size Group No. 7 are washed, air-cleaned, water-screened, or water-dedusted, they shall be priced the following amounts higher than the prices established for raw coals of the same size:

"Washed or Air-cleaned, 10 cents per net ton. Water-screened or Water-dedusted, 5 cents per net ton.

"Exception.—The provisions of this clause will not apply to 1½" x ¾" air-cleaned breaker nut coal."

Subsequently, the District Board revised and amended the above item (No. 13), so that as revised the item reads as follows (Exhibit No. 630):

"Washed, Air-cleaned, Water-screened or Water-dedusted Nut and Stoker Coals:

"When the nut and stoker coals in Size Group No. 7 are washed, air-cleaned, water-screened, or water-dedusted, they shall be priced the following amounts higher than the prices established for raw coals of the same size:

"Washed or Air-cleaned: Class F Mines, 15 cents per net ton. All other mines, 10 cents per net ton. Water-screened or water-dedusted, 5 cents per net ton.

"Exception.—The provisions of this clause will not apply to 1½" x ¾" air-cleaned breaker nut coal."

The proposed schedule of minimum prices and classification (Exhibit No. 628) shall be further corrected in the following respects:

(1) Change the classification of Size Group No. 7 for Snow Hill Corporation's

Bardye Mine, listed on page 22 of said schedule (Exhibit No. 628) in Class "F" to Class "E."

(2) Note No. 1 appearing on the cover page of the proposed schedule (Exhibit No. 628) be amended so as to read as follows:

"NOTE No. 1.—The prices in this schedule are not the final prices to be established on coal for shipment by Code Members within this District into consuming markets of said District. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease, respectively, as may be found necessary to carry into effect the provisions of subsections (a) and (b) of Part II, Section 4 of the Act."

(3) That Note No. 2 on the cover page of the proposed schedule (Exhibit No. 628) be deleted in its entirety, for the reason that such note is altogether superfluous, relating as it does to matters that may be properly considered only under the coordination proceedings prescribed by subsection (b) of Part II, Section 4 of the Act.

(4) Amend Item No. 3 on page 3 of the proposed schedule (Exhibit No. 628), so that when so amended the said item No. 3 shall read:

"All size designations herein are for round hole screens, except when otherwise designated. When other types of screens are used the District Board, subject to the approval of the Coal Commission, shall determine the actual size designation of the coal so prepared."

(5) 2½ inch screenings.—That Item No. 8, page 4 of the proposed schedule of prices (Exhibit No. 628) be amended to read as follows:

The price of screenings, maximum top size 2½" and down to, but not including 2" screenings, shall be the same as the price established for 2" modified screenings for the mine from which the 2½" screenings and down to, but not including 2" screenings, are shipped.

(6) 2 inch screenings.—That Item No. 9, page 4 of the proposed schedule of prices (Exhibit No. 628) be amended, so that as amended it shall read as follows:

"The price of screenings, maximum top size 2" and down to, but not including 1½" screenings, of their respective several preparations (raw, washed, air-cleaned, water-dusted or modified) shall be 10 cents per net ton higher than the prices of 1½" or 1¼" screenings of the corresponding preparation."

(7) Exhibit No. 663 "Railroad fuel prices" is substituted for, and supersedes, all of the matter shown at pages 26, 27, 28, and 29 of the original proposed schedule (Exhibit No. 628), and provides that:

The minimum price of railroad locomotive fuel coal shall be 185 cents per net ton f. o. b. mines.

NOTE.—When finally established, the prices proposed for locomotive fuel coal purchased by the C. M. St. P. & P., N. Y. C. and Penn-

sylvania Railroads will be adjusted to permit mines on the short line connecting carriers of those roads to equalize the delivered prices of their coal with the delivered prices of coal of the mines located on the purchasing carriers.

Coaling locomotives at mine tipples.—An additional charge of 15 cents per net ton shall be added to the minimum prices established for locomotive fuel, to cover the extra cost of coaling locomotives at mine tipples, when such service is performed.

Inasmuch as the contents of the foregoing note, beginning with the words, "When finally established," and ending with the words, "located on the purchasing carriers" contains matter proper for consideration in coordination proceedings as prescribed in subsection (b), Part II, Section 4 of the Act only, it is ordered that the same be stricken.

(8) Exhibit No. 663 is amended by inserting the words "not less than" immediately after the words "An additional charge of," and next preceding the figures and words "15 cents per net ton," in the second paragraph of the note forming a part of said Exhibit, so that when amended as hereby proposed, the amended paragraph shall read thus:

An additional charge of not less than 15 cents per net ton shall be added to the minimum prices established for locomotive fuel, to cover the extra cost of coaling locomotives at mine tipples, when such service is performed.

(9) For the purpose of further clarification of the proposed schedule of prices (Exhibit No. 628) the following addition and changes are made at pages 9 to 24, inclusive, thereof:

The small alphabetical letter "(a)" shall be inserted at the head of the column titled "Vein of Coal," and the footnote on each of said pages reading: "(a) See Page No. 6," shall be amended so that said footnote, when so amended, shall read: "(a) See Pages 6 and 8."

(10) That a title heading be inserted at page 25 of the proposed schedule of prices (Exhibit No. 628) reading as follows:

"Prices for shipments into all market areas (except railroad locomotive fuel)," and at the bottom of said page add a footnote reading:

"See Price Instructions and Exceptions."

(11) That amendments in accordance with Circular No. 97 of the District Board dated September 28, 1938, in evidence herein, for the correction of certain errors running through the proposed schedule of prices (Exhibit No. 628) are made in the following particulars, viz.:

(a) Bonnie Brook Mines, Inc.—Bonnie Brook Mine (Page 10),

Change vein of coal from V. to B.

(b) Calmuck Mining Company—Calmuck Mine (Page 11),

Change name of mine to Calmuck.

(c) Hagdorn Brothers—Hagedorn Mine (Page 14),

Change name of Code Member to Hagedorn Brothers.

(d) Kitchen, Hall & Trudyville (Page 17),

Change "Trudyville" to Trubyville.

(e) Maumee Collieries Company—Linton Mine No. 23 (Page 18),

Change classification "E" in Size Group No. 7 to "F."

(f) Possum Hollow Coal Company, Inc.—Lone Tree Mine (Page 20),

Change classification "J" in Size Group 7 to read "K."

(g) Range Line Coal Company, Inc.—Ranger Mine (Page 21),

Change name of mine to read Range Line Mine.

(h) Rio Grande Coal Company—Rio Grande Mine (Page 21),

Eliminate the entry. The mine is now operated by Lone Maple Coal Company.

(i) Superior Products Company—Superior Mine (Page 23),

Change the name of Code Member to Superior Products, Inc.

(j) James A. Taylor—Tell City Mine (Page 23),

Change mine name to Taylor.

Protest of Maumee Collieries Company

By its protest to the Commission (Exhibit No. 651), this Code Member requested a revision in classification of its coals in Size Groups 7, 10, 11, 13, 16, and 17, produced at its Chieftain Mine No. 20, in Vein V, District No. 11. By the proposed schedule of prices (Exhibit No. 628) the above mentioned size groups are classified thus:

Size groups	7	10	11	13	16	17
Price classification.....	H	H	H	H	H	H

In and by its protest the protestant contends that a fair competitive basis for its coals in these size groups should have the following classification:

Size groups.....	7	10	11	13	16	17
Price classification.....	J	J	J	J	J	J

which, if granted, would result in lowering the price in each size group 10 cents per net ton.

Screenings in base Size Group No. 11 from Chieftain Mine No. 20 are similar in all characteristics to screenings of other mines with which they are classified, as to analysis and burning qualities, with the one exception that Chieftain screenings are lacking in heat value and percentage of combustible material. Market experience at all times under both fixed and uncontrolled prices indicates a differential for Chieftain No. 20 Mine under other screenings of this group; that Chieftain modified screenings (Size Group 10) have at all such times been priced the same as straight screenings

(Size Group No. 11) of the other mines. There is no sufficient evidence in the record to substantiate the protest with respect to Size Groups 7, 11, 13, 16, and 17.

Protest of Sunlight Coal Company

This protest is in the main directed against the procedure followed by the District Board for District No. 11; it claimed, among other things, that the Board failed to comply with certain material requirements of the Act and urged the Commission to disapprove and set aside the proposed schedule of prices (Exhibit No. 628) as revised and amended in the several respects herein mentioned, and in the stead thereof to:

"Issue an order directing said Board to propose a reasonable schedule of minimum prices in accordance with the provisions of the Act and Order No. 249 * * *"

Protestant, by its protest, also complained in respect to the following:

- (a) Size Group No. 1, 6" x 4" Egg;
- (b) Differentials between raw and washed coal;
- (c) Between raw and water-dedusted coal;
- (d) To the charge provided for in Item No. 13 (Exhibit 628 as amended by Exhibit No. 630) of the Price Instructions and Exceptions;
- (e) To the exceptions for washing, etc., Size Group No. 7 coals; and
- (f) To the charge of 45 cents per net ton for washing carbon.

The protest was received in evidence as Exhibit No. 662 "for what it may be worth," but certainly not as proof of its contents. No other evidence was offered by the protestant in support of its protest and the claims set forth therein. There being no evidence to sustain this protest, the same is denied.

Protest of Patoka Coal Company

The protest (Exhibit No. 661) consists of two parts, one of which no longer requires consideration, for the reason that the matters involved therein have already been considered and fully determined by the Commission. A brief reference to this part of the protest, which complains of the method employed by the District Board in establishing a schedule of proposed minimum prices, and requesting that such schedule be rejected and set aside by the Commission, is however noted for the purpose of making clear the proceedings in relation thereto at the hearing thereof. Three motions were made by protestant during the hearing, the substance of each and all of which amounts to a request that this entire matter be remanded to the District Board with instructions to propose a new schedule of minimum prices in accordance with the provisions of the Act and of Order No. 249. For the reason that no sufficient evidence appears in the record to warrant sustaining any or all of the motions, they were, there-

fore, each and all overruled by the Commission at the hearing.

The remaining portion of said protest requests varying differentials on washed coals to reflect different specific gravities that may or might be employed in the flotation process of washing. The protestant does not wash any of its own coals, as the evidence conclusively shows. Therefore, it is manifest that this portion of the protest is intended to apply to competitors who do wash their coals and also to the possibility that protestant may, in the future, install and employ a washery.

The uncontradicted evidence shows that all coals produced in District No. 11, at all the mines, vary in ash content, even from the same mine, from day to day, and that it is impossible to reflect these variations positively by means of classification.

The evidence further shows that "the District Board did have knowledge of this problem and the District Board classified the washed coals into groups and classified the mines on the basis of the specific gravity, or the ash content on which that mine had been operating." If, therefore, a change from existing practice is made by any mine, such mine will be subject to reclassification.

The request of protestant that the words: "except railroad fuel coal" be deleted from Note No. 2 on the cover page of the schedule (Exhibit No. 628) is of no import, for the reason that the entire note has been stricken, because it relates to coordination to be made under the provisions of Section 4, Part II, Subsection (b) of the Act.

The protest should be denied.

Protest of Chicago & Eastern Illinois Railway Company

This protestant, in and by its protest (Exhibit No. 689), requests a lower price for railroad locomotive screenings, because of differentials alleged to exist for railroad locomotive fuel and because, as alleged, commercial screenings sell for a lower price than other commercial sizes.

The evidence shows that:

- (1) The protestant is not a producer of coal, and is not, therefore, a Code Member.
- (2) The use of screenings for railroad locomotive fuel is increasing in volume, caused by changes in type of locomotive equipment.
- (3) The railroad industry is a large consumer of coal.
- (4) A reduction in prices of railroad locomotive screenings will operate to increase "some of the other prices" of coal.

There is no evidence to show that protestant has any right, at this time, to the relief requested.

Protests of Central Indiana Coal Company and Sherwood-Templeton Coal Company

These two protests were consolidated for the purposes of the hearing. The

Sherwood-Templeton Coal Company operates two mines in District No. 11, known respectively as "Friar Tuck" and "Robin Hood" mines. The Central Indiana Coal Company operates in the same district the mine known as the "Allendale" mine. Each is a Code Member. The protestants request a reclassification of the coals produced at each of the named mines in Size Groups 1, 2, 3, 7, 8, and 12, as illustrated by the following graphs:

Allendale Mine

Size groups	1	2	3	7	8	12
District Board Proposals	240	225	220	W 170	160	125
Protestant's Request	230	210	205	160	140	110

Robin Hood Mine

Size groups	1	2	3	7	8	12
District Board Proposals	240	225	220	W 170	160	125
Protestant's Request	240	215	210	170	150	120

Friar Tuck Mine

Size groups	1	2	3	7	8	12
District Board Proposals	240	225	220	W 170	160	125
Protestant's Request	240	210	205	170	150	120

There is sufficient evidence in the record to warrant a modification in the classification of Size Groups 1, 2, and 3, Allendale Mine, from "E" to "G," a reduction of 10 cents in each of said three size groups from the proposed prices of the District Board as to the same.

The coals produced by the Allendale Mine of the Central Indiana Coal Company below 4" are washed, while those in Size Groups 1, 2, and 3 are not washed. The evidence indicates that Allendale coals in these size groups are inferior in appearance and quality to other coals with which they were classified by the District Board. However, the Board disregarded this testimony and classified the coals of this mine in Size Groups 1, 2, and 3, as "E."

There is no sufficient evidence in the record to warrant any other or further modification of the proposals of the District Board in respect to any of the other classifications shown in and by either and all of the foregoing graphs. The coals of the protestants in all classifications other than those changed are comparable to others so classified. Except as shown in the next preceding paragraph hereof, the consolidated protests should be denied.

Protest of Electric Shovel Coal Corporation

This protest (Exhibit No. 652) is directed against the classification of the coals of the protestant in Size Groups 10 and 11, as compared with those of

other mines in the District with which the protestant's coals are classified. The following table shows the proposed classification by the District Board and the request of the protestant for modification thereof:

Size groups	10	11
District Board Proposal.....	K 135	K 125
Protestant's Request ¹	M 125	K 125

¹ Request is based upon the fact that certain other shipping mines are so classified. The protest, however, states that there should be a 10 cent differential between Size Groups 10 and 11, but the testimony for the protestant indicates that the protest will be satisfied if the other mines in the same classification group were subjected to a 10-cent increment, which would raise the classification of such mines in Size Group 10 from "M" to "K."

Therefore, in effect, the request of the protestant is for either "M" classification in Size Group 10, with "K" in Size Group 11, or "K" for the other mines in its classification group in Size Group 10 and "K" classification in Size Group 11.

The evidence indicates that the classification proposed for Clinton Mine of the Electric Shovel Coal Corporation in Size Group 10 as "K" should be reduced to "M" for the reason that they are the same in quality as coals produced at mines in Size Groups 6, 9, and 11, and therefore compete with such coals.

The evidence is sufficient to warrant a reduction of the proposed classification for protestant's Clinton Mine in Size Group 10 from "K" to "M," so that the coals in this size group are classified the same as coals from mines in producing groups 6, 9, and 11 (see Exhibit 641), which are similar to and compete therewith.

Realization

Exhibit No. 663 which, as above noted herein, supersedes pages 26, 27, 28, and 29 of the District Board's Minimum Price Proposal (Exhibit 628) and changes the minimum price proposed for railroad locomotive fuel to \$1.85 per net ton f. o. b. the mines, reduced the weighted average return for District No. 11 to the amount of 3.1 cents, provided only that all of such coals are sold at this minimum. However, the evidence shows that a substantial portion of locomotive fuel coals of the District will sell for a higher price than the Board's proposal of \$1.85.

Page 2 of Exhibit No. 650 shows realization of \$1.7697 per net ton, based upon the application of minimum proposed prices (Exhibit No. 628). The reduced realization of 3.1 cents per net ton, due to the amendment made by Exhibit No. 663, shows a realization of \$1.7387 per net ton f. o. b. the mines, and is as "nearly as may be" equal to the average weighted cost of Minimum Price Area No. 2, namely, \$1.772.

Wherefore, upon the evidence contained in the record herein, both documentary and oral, and upon the facts established thereby, the Commission finds that:

1. The schedule of proposed minimum prices, as amended, and submitted to the Commission by the District Board for District No. 11 shall be modified, corrected, and revised, so that the same may the better conform to the provisions of Order No. 249 of the Commission and of Section 4, Part II, Subsection (a) of the Act, and said schedule is hereby modified in the following respects:

(a) Item 3 at Page 3 under heading "Price Instructions and Exceptions", schedule (Exhibit No. 628) shall be changed to read as follows:

All size designations herein are for round hole screens, except when otherwise designated. When other types of screens are used the District Board, subject to approval by the Commission, shall determine the actual size designation of coal so prepared.

(b) Item No. 4 of said schedule (Exhibit No. 628), as above, shall be changed to read:

"All prices herein are in cents per net ton of 2,000 pounds f. o. b. transportation facilities at the mines."

(c) The revised and corrected Item No. 13 (Exhibit No. 630) shall be substituted for the original Item No. 13, as the latter is set out at page 5 of the schedule (Exhibit No. 628), to read as follows:

"Washed, Air-cleaned, Water-screened or Water-dedusted Nut and Stoker Coals.—

"When the nut and stoker coals in Size Group No. 7 are washed, air-cleaned, water-screened or water-dedusted, they shall be priced the following amounts higher than the prices established for raw coals in the same size:

"Washed or air-cleaned, Class F Mines, 15 cents per net ton.

"All other mines, 10 cents per net ton.

"Water-screened or water-dedusted, 5 cents per net ton.

"Exception.—The provisions of this clause will not apply to 1½" x ¾" air-cleaned breaker nut coal."

(d) The classification of Size Group No. 7 for Snow Hill Corporation's Bardyke Mine, listed at page 22 of said schedule (Exhibit No. 628), changed from Class "F" to Class "E."

(e) Note No. 1 on the cover page of said schedule (Exhibit No. 628) shall be amended to read as follows:

"NOTE No. 1.—The prices in this schedule are not final prices to be established on coal for shipment by Code Members within this District into consuming markets of said District. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease, respectively, as may be found necessary to carry into effect the provisions of subsections (a) and (b) of Part II, Section 4 of the Act."

(f) Note No. 2 on the cover page of said schedule (Exhibit No. 628) is deleted in its entirety for reasons appearing above herein.

(g) The special prices proposed by the District Board for breaker screenings (Exhibit No. 628, Items 5, 6, and 7, page 3) are warranted by the evidence and approved by the Commission.

(h) Item No. 8, page 4 of said schedule (Exhibit No. 628) shall be amended to read:

"The price of screenings, maximum top size 2½" and down to, but not including 2" screenings, shall be the same as the price established for 2" modified screenings for the mine from which the 2½" screenings down to, but not including 2" screenings, are shipped."

(i) Item No. 9, page 4 of said schedule (Exhibit No. 628) shall be amended to read:

The price of screenings, maximum top size 2" and down to, but not including 1½" screenings, of their respective preparations (raw, washed, air-cleaned, water-dedusted or modified) shall be 10 cents per net ton higher than the prices of 1½" or 1¼" screenings of the corresponding preparation.

(j) Pages 26, 27, 28, and 29 are deleted and in the place thereof Exhibit No. 663, and the contents thereof, as revised and amended in the respects shown, is substituted for said deleted pages of said schedule.

(k) Inasmuch as a portion of the note in Exhibit No. 663, forming a part thereof, beginning with the words, "When finally established," etc., and ending with the words, "located on the purchasing carriers" contains matter proper for consideration in coordination proceedings as prescribed by subsection (b) of Part II, Section 4 of the Act only, said part is deleted from the record.

(l) Further, as to said Exhibit No. 663, the same shall be amended by inserting the words "not less than" after the words "An additional charge of" and immediately preceding the words and figures "15 cents per net ton" in the second paragraph of said note, forming a part of said exhibit.

(m) For purposes of further clarification of the schedule (Exhibit No. 628) the small letter "(a)" shall be inserted at the head of the column (pages 9 to 24, inclusive) titled "Vein of Coal," and the footnote on each of said pages, reading "(a) See Page No. 6," is changed to read, "(a) See Pages 6 and 8."

(n) A title heading shall be added at page 25 of said schedule (Exhibit No. 628) reading: "Prices for Shipments into All Market Areas (Except Railroad Locomotive Fuel)," with a footnote at the bottom of said page reading: "See Price Instructions and Exceptions."

(o) All changes in said schedule (Exhibit No. 628) in accordance with Circular No. 97 of the District Board, dated

September 28, 1938, correcting certain clerical errors in said original schedule, as hereinabove expressly mentioned, is approved and found by the Commission to be correct and proper, and, as to each and every item thereof, supersedes and displaces those items of the original schedule to which they are specifically directed.

(p) The schedule of minimum prices, as amended in the foregoing respects, and submitted to the Commission by the District Board for District No. 11, should be further corrected and revised, in order that it may more fully comport with the provisions of Order No. 249 of the Commission and of subsection (a) of Part II, Section 4 of the Act, and conform to the material evidence in the record warranting the same in the following respects:

(1) The proposed classification for the coals of the Maumee Collieries Company, Chieftain Mine, in Size Group No. 10 should be changed from classification "H" to "J."

(2) The proposed classification for the coals of the Central Indiana Coal Company, as to Size Groups 1, 2, and 3, Allendale Mine, should be changed from classification "E" to "G."

(3) The proposed classification for the coals of the Electric Shovel Coal Corporation, in Size Group 10, Clinton Mine, should be changed from classification "K" to classification "M."

2. Except as to the manner and to extent above herein set forth (sub-paragraph (p) (1), (2), and (3)), none of the protestants mentioned hereinabove are entitled to any other or further relief in the premises of which complaint is made; and, therefore, said protests should be in all other respects denied.

3. The schedule of minimum prices, as amended and submitted to the Commission by the District Board for District No. 11, is further corrected and revised as above herein expressly set forth, as to the matters and things above recited. In all other respects the said schedule is accepted and approved by the Commission.

4. The District Board for District No. 11, as directed by Order No. 249 of the Commission, proposed minimum prices free on board transportation at the mines for the kinds, qualities, and sizes of coals, produced within the District, classification of coals and price variations as to mines and consuming market areas.

5. The said District Board, as directed in said Order No. 249, submitted to the Commission a schedule of such proposed minimum prices, together with the data upon which they were computed, including, but without limitation, the factors considered in determining the price relationships.

6. The minimum prices proposed by the said District Board, as above herein changed, amended, and modified, reflect as nearly as possible the relative market

value of the various kinds, qualities, and sizes of coal produced within said District No. 11. They are just and equitable as between producers within the District. They have due regard to the interests of the consuming public. They do not permit dumping.

7. The minimum prices proposed by the District Board for District No. 11, for any kind, quality and/or size of coals for shipment into any consuming market areas, as herein modified, are just and equitable as between producers within said District.

8. The minimum prices proposed by the said District Board, as herein modified, yield a return per net ton for the District equal, as nearly as may be, to the weighted average of the total costs, per net ton, of the tonnage of Minimum Price Area No. 2, in which District No. 11 is located under the Act.

9. The schedule of proposed minimum prices, as amended and submitted to the Commission by the District Board for District No. 11, and as further corrected, amended, revised, and modified as set forth above herein, conforms to the provisions of Order No. 249 of the Commission and to the requirements of subsection (a) of Part II, Section 4 of the Act. As so amended, corrected, revised, and modified said schedule should be, and it is hereby, approved by the Commission, as a basis for the coordination provided for in subsection (b) of Part II, Section 4 of the Act.

A copy of said schedule, as amended, corrected, revised, and modified appears in the Appendix for District No. 11.

APPENDIX FOR DISTRICT NO. 11

SCHEDULE OF MINIMUM PRICES AS MODIFIED AND APPROVED TO SERVE AS A BASIS FOR COORDINATION

NOTE.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

F. W. McCULLOUGH,
Secretary.

Issued: February 2, 1939.

Price Instructions and Exceptions

Item No. 1. The schedule of prices shown herein applies f. o. b. transportation facilities at mines on all coal produced by Code Members in the District shown above.

Item No. 2. All prices are subject to the Marketing Rules and Regulations issued by the National Bituminous Coal Commission.

Item No. 3. All size designations herein are for round hole screens, except when otherwise designated. When other types of screens are used the District

Board, subject to the approval of the Coal Commission, shall determine the actual size designation of the coal so prepared.

Item No. 4. The prices listed herein are in cents per net ton of 2,000 pounds f. o. b. transportation facilities at the mine.

Item No. 5. *Raw breaker screenings.*—The price of raw breaker screenings, $1\frac{3}{4}$ " or less top size, shall be 25 cents per ton less than the price of $1\frac{1}{2}$ " or $1\frac{1}{4}$ " raw screenings produced at the mine from which the breaker screenings are shipped; provided, that in no instance shall the price of raw breaker screenings be less than 25 cents per ton under the price established for Class "H" $1\frac{1}{2}$ " or $1\frac{1}{4}$ " raw screenings.

Item No. 6. *Air-cleaned breaker screenings.*—The price of air-cleaned breaker screenings shall be the same as the price of $1\frac{1}{2}$ " or $1\frac{1}{4}$ " raw screenings produced at the mine from which the breaker screenings are shipped; provided, that in no instance shall the price of air-cleaned breaker screenings be less than the price established for Class "H"— $1\frac{1}{2}$ " or $1\frac{1}{4}$ " raw screenings.

Item No. 7. *Washed breaker screenings.*—The price of washed breaker screenings shall be 10 cents per ton higher than the price of $1\frac{1}{2}$ " or $1\frac{1}{4}$ " raw screenings produced at the mine from which the washed breaker screenings are shipped; provided, that in no instance shall the price of washed breaker screenings be less than 10 cents per ton higher than the price established for Class "H"— $1\frac{1}{2}$ " or $1\frac{1}{4}$ " raw screenings.

Item No. 8. *$2\frac{1}{2}$ -inch screenings.*—The price of screenings, maximum top size $2\frac{1}{2}$ " and down to but not including 2" screenings, shall be the same as the price established for 2" modified screenings for the mine from which the $2\frac{1}{2}$ " screenings and down to but not including 2" screenings are shipped.

Item No. 9. *2-inch screenings.*—The price of screenings, maximum top size 2" and down to but not including $1\frac{1}{2}$ " screenings, of their respective preparation (raw, washed, air-cleaned, water-dusted or modified) shall be 10 cents per ton higher than the price of $1\frac{1}{2}$ " or $1\frac{1}{4}$ " screenings, of the corresponding preparation.

Item No. 10. *Dedusted washed screenings.*—The price of dedusted washed screenings, dedusted over screens with openings not larger than 10 mesh, shall be 5 cents per ton higher than the price established for the same size of washed screenings produced at the same mine and which have not been dedusted.

Item No. 11. *$2 \times \frac{3}{8}$ -inch to 6 mesh nut.*—The price of $2 \times \frac{3}{8}$ " to 6 Mesh Nut coal shall be the following amounts higher than the prices established for the sizes included in Size Group No. 7:

Washed or air-cleaned.....	15 cents per ton.
Raw.....	5 cents per ton.

Item No. 12. *Calcium chloride and oil treated coal.*—All coals in Size Groups 1 to 6, inclusive, treated with oil, wax, cal-

cium chloride, or other dust-allaying or anti-freezing agents, shall be priced 10 cents per ton higher than the same size untreated.

On coals in all other size groups, the increase of 10 cents per ton shall apply only during the period April 1st to November 15th, inclusive, in each year, and shall not apply during the period November 16th to March 31st, inclusive.

Item No. 13. *Washed, air-cleaned, water-screened or water-dedusted nut and stoker coals.*—When the nut and stoker coals in Size Group No. 7 are washed, air-cleaned, water-screened, or water-dedusted, they shall be priced the following amounts higher than the prices established for raw coals of the same size:

Washed or Air-cleaned:	
Mines Classified "F".....	15 cents per net ton.
Mines, All Other	
Classifications.....	10 cents per net ton.
Water-screened or Water-	
dedusted.....	5 cents per net ton.

Exception.—The provisions of this clause will not apply to $1\frac{1}{2}$ " x $\frac{3}{8}$ " air-cleaned breaker nut coal.

Item No. 14. *Sizes made from other than straight mine run.*—Where any mine has a lower classification than Class "H" for Size Groups 7-10-11-13-16-17, the classification assigned to such mine for those sizes, shall apply only when such mine loads coal, in those sizes, that is made in the natural process of screening straight mine run as it comes to the tippie. Where any of the mines referred to in this item prepare any of the sizes in Groups 7-10-11-13-16-17 by any method other than in the natural separation of straight mine run, such sizes shall take a Class "H" classification.

Definitions

Item No. 15. *Modified screenings.*—Modified screenings are screenings from which a portion of the fines has been removed through screens with openings smaller than 6 mesh, or screenings from which sufficient $\frac{3}{8}$ x 0 fines have been removed to leave not less than 23.5 percent of $\frac{3}{8}$ x 0 fines in the modified screenings.

Item No. 16. *Raw breaker screenings.*—Raw breaker screenings are screenings made by crushing or breaking, in a Bradford or similar type of breaker, only such coal as is rejected from the picking-tables in the hand-picking process of cleaning coarse sizes.

Item No. 17. *Washed or air-cleaned breaker screenings.*—Washed or air-cleaned breaker screenings are screenings made by crushing or breaking, in a Bradford or similar type of breaker, only such coal as is rejected from the picking-tables, in the hand-picking process of cleaning coarse sizes, and which are subsequently washed or air-cleaned.

Item No. 18. *Washed screenings.*—Washed screenings, as referred to in this

Schedule of Minimum Prices, shall consist of 2", $1\frac{1}{2}$ ", $1\frac{1}{4}$ ", 1", and $\frac{3}{4}$ " screenings, from which no fines greater than 1 millimeter have been removed before or after washing.

Item No. 19. *Dedusted washed screenings.*—Deducted washed screenings are screenings from which a portion of the fines have been removed, either before or after washing, over a screen with openings not larger than 10 mesh.

Item No. 20. *Water-dedusted screenings.*—Water-dedusted screenings are screenings which have not been subjected to cleaning by the floatation process, and from which a portion of the fines has been removed through the use of high-pressure water sprays on screens with openings not larger than 10 mesh.

Explanation of Veins of Coal

Symbol	Identification
Item No. 21. III	Third Vein.
IV	Fourth Vein.
V	Fifth Vein.
VI	Sixth Vein.
VII	Seventh Vein.
B	Brazil Block Vein.
C	Cannel Vein.
M	Minshall Vein.
SB	Semi-Brazil Block Vein.

Explanation of Notes and Reference Marks

Description

Item No. 22.—(a) The numerals shown in column headed "Sub-district," in the classification section of this schedule, indicate the counties in which the truck mines are located. The symbols BC-LS-PA-BO-EV indicate the sub-districts in which the rail mines are located. Explanation of the symbols and numerals is included below.

Size Groups¹

Sizes Included

Size group No. 1:

6" and Larger Lump.
5" Lump.

Size group No. 2:

4" Lump.
8 x 4" Egg.
7 x 4" Egg.
6 x 4" Egg.
6 x $3\frac{1}{2}$ " Egg.
5 x 4" Egg.

Size group No. 3:

3" Lump.
 $2\frac{1}{2}$ " Lump.
8 x 3" Egg.
7 x 3" Egg.
6 x 3" Egg.
6 x $2\frac{1}{2}$ " Egg.
5 x 3" Egg.
4 x 3" Egg.

Size group No. 4:

2" Lump.
8 x 2" Egg.
6 x 2" Egg.
5 x 2" Egg.
4 x 2" Egg.
3 x 2" Nut.

Size group No. 5:

$1\frac{1}{2}$ " Lump.
 $1\frac{1}{4}$ " Lump.
1" Lump.
 $\frac{3}{4}$ " Lump.
 $\frac{1}{2}$ " Lump.
8 x $1\frac{1}{2}$ " Egg.
8 x $1\frac{1}{4}$ " Egg.
6 x $1\frac{1}{2}$ " Egg.
6 x $1\frac{1}{4}$ " Egg.
6 x 1" Egg.
6 x $\frac{3}{4}$ " Egg.
6 x $\frac{3}{8}$ " Egg.
5 x $1\frac{1}{2}$ " Egg.
5 x $1\frac{1}{4}$ " Egg.
5 x $\frac{3}{8}$ " Egg.
4 x $1\frac{1}{2}$ " Egg.
4 x $1\frac{1}{4}$ " Egg.
4 x 1" Egg.
4 x $\frac{3}{4}$ " Egg.
4 x $\frac{1}{2}$ " Egg.
3 x $1\frac{1}{2}$ " Nut.
3 x $1\frac{1}{4}$ " Nut.
3 x $\frac{3}{4}$ " Nut.
3 x $\frac{1}{4}$ " Nut.

Size group No. 6:

$2\frac{1}{2}$ x $1\frac{1}{2}$ " Nut.
2 x $1\frac{3}{4}$ " Nut.
2 x $1\frac{1}{2}$ " Nut.
2 x $1\frac{1}{4}$ " Nut.
2 x 1" Nut.
2 x $\frac{3}{4}$ " Nut.

Size group No. 7:

$1\frac{1}{2}$ x $1\frac{1}{4}$ " Nut (Raw).
 $1\frac{1}{2}$ x 1" Nut (Raw).
 $1\frac{1}{4}$ x 1" Nut (Raw).
 $1\frac{1}{2}$ x $\frac{3}{4}$ " Nut (Raw).
 $1\frac{1}{4}$ x $\frac{3}{4}$ " Nut (Raw).
 $1\frac{1}{4}$ x $\frac{5}{8}$ " Nut (Raw).
 $1\frac{1}{2}$ x $\frac{3}{8}$ " to 6 Mesh Nut (Raw).
 $1\frac{1}{4}$ x $\frac{3}{8}$ " to 6 Mesh Nut (Raw).
1 x $\frac{3}{8}$ " to 6 Mesh Nut (Raw).
 $\frac{3}{4}$ x $\frac{3}{8}$ " to 6 Mesh Nut (Raw).
 $1\frac{1}{2}$ x $\frac{3}{8}$ " Air Cleaned Breaker Nut.

Size group No. 8:

$1\frac{1}{2}$ " Screenings (Washed or air cleaned).
 $1\frac{1}{4}$ " Screenings (Washed or air cleaned).
1" Screenings (Washed or air cleaned).
 $\frac{3}{4}$ " Screenings (Washed or air cleaned).
 $\frac{1}{2}$ " Screenings (Washed or air cleaned).

Size group No. 9:

$1\frac{1}{2}$ " Screenings (Water dedusted).
 $1\frac{1}{4}$ " Screenings (Water dedusted).
1" Screenings (Water dedusted).
 $\frac{3}{4}$ " Screenings (Water dedusted).
 $\frac{1}{2}$ " Screenings (Water dedusted).

Size group No. 10:

$1\frac{1}{2}$ " Screenings (Modified).
 $1\frac{1}{4}$ " Screenings (Modified).
1" Screenings (Modified).
 $\frac{3}{4}$ " Screenings (Modified).
 $\frac{1}{2}$ " Screenings (Modified).

Size group No. 11:

$1\frac{1}{2}$ " Screenings (Raw).
 $1\frac{1}{4}$ " Screenings (Raw).
1" Screenings (Raw).
 $\frac{3}{4}$ " Screenings (Raw).
 $\frac{1}{2}$ " Screenings (Raw).

¹ See Price Instructions and Exceptions.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

Code member	Mine name	Vein of coal	Sub-district	Price classifications and size group numbers														Code member	Mine name	Vein of coal	Sub-district	Price classifications and size group numbers													
				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18														
Carter, A. J.	Central Black Coal Mining Co.	V	16	J	J	J	J	J	J	J	J	J	J	J	J	J	J	J	J	J	J	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Central City Mining Company	Central City	B	LS	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Central Indiana Coal Company	Alendale	VI	LS	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Chamberlain Brothers	Same	B	1	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Chastain & Baker	Spies	B	8	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Chesser, Alonzo	Chesser	V	12	J	J	J	J	J	J	J	J	J	J	J	J	J	J	J	J	J	J	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Christy Brothers	Christy	V	17	J	J	J	J	J	J	J	J	J	J	J	J	J	J	J	J	J	J	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Clark County Coal Company	Clark Products	V	14	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Clear View Coal Company	Clear View	B	BC	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Clinton Coal Company	Crown Hill 6	V	10	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Clinton Coal Company	Submarine 2	IV	BC	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Collier's Coal & Coke Company	7	VII	BC	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Collins Coal Company	Collins	IV	1	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Comet Coal Company, Inc.	Comet	V	BO	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Cornin, Ellisworth	Cornin	IV	6	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Cornin, Ben & Sons Coal Co.	Cornin	VI	2	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Cosgrove Coal Company	Cosgrove	V	13	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Cotton, Earl	Cotton	V	19	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Cox Coal Company	Cox	SB	10	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Crabb, Merrill W.	Crabb & Dehart	M	10	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Craig Brothers Coal Company	Craig Brothers	B	10	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Crescent Coal Company	Crescent	V	EV	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Critchfield Coal Company	Critchfield	VI	6	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Crowder, Amos	Crowder	V	4	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Crowder, Raustin	Crowder	V	4	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Dant Mine, The	Dant Mine	SB	2	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Davies County Coal Company	Davies County	IV	2	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Davis, Clyde	Davis	V	12	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Davis, Earl	Davis	M	12	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Davis & Harlin	Davis	V	12	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Decker, Oscar F.	Decker	V	19	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Delacoe, Don Coal Company	Delacoe	B	1	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Delacoe, John Coal Company	Delacoe	B	1	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Dillon, Dan W.	Dillon	V	8	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Ditto, Roy	Ditto	VI	16	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Dixie Bee Mining Corporation	Dixie Bee	V	18	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Dixon Black Coal Co., Inc.	Dixon	B	8	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Dobson, H. J.	Dobson & Sims	IV	1	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Dollans, Leonard	Dollans	B	1	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Douglas Creek Coal Company	Douglas Creek	V	19	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Dorsey, William	Dorsey	V	19	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Downs, Wilson	Downs	VI	18	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Duchene Brothers	Duchene	V	18	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Dugger, Charles F.	Dugger	VI	18	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Dugger-Domestic Coal Company	Dugger	VI	2	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Duncan, L. H.	Duncan	B	9	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Duncan, W. H.	Duncan	M	4	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Dunn, Claude N.	Dunn	B	11	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Durkin, J. F.	Durkin	B	11	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
East End Coal Company	East End	SB	4	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
East Yellico Mine	East Yellico	V	3	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Eckert, Frank	Eckert	V	3	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Eckert, Gust	Eckert	V	3	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Edelman Mine	Edelman	B	9	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Edgewood Coal Corporation	Edgewood	V	BC	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E
Edwards, Ralph, Doyle	Edwards	SB	2	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	LS	E	E	E	E	E	E	E	E	E	E	E	E	E

1 Not classified account lack of data.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

[illegible]

1 Not classified account lack of data.

Alphabetical List of Code Members Showing Price Classification by Sizes for All
Uses Except as Noted—Continued

[illegible]

1 Not classified account lack of data.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

[illegible]

For Shipment Into All Market Areas (Except Railroad Locomotive Fuel)

Price classification		Prices in cents per net ton of 2,000 pounds and size group numbers																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
A	260	245	240	230	225	210	195	195	190	185	175	160	145	155	150	145	135	120	220
B	255	240	235	225	220	205	190	190	185	180	170	155	140	150	145	140	130	115	215
C	250	235	230	220	215	200	185	185	180	175	165	150	135	145	140	135	125	110	210
D	245	230	225	215	210	195	180	180	175	170	160	145	130	140	135	130	120	105	205
E	240	225	220	210	205	190	175	175	170	165	155	140	125	135	130	125	115	100	200
F	235	220	215	205	200	185	170	170	165	160	150	135	120	130	125	120	110	95	195
G	230	215	210	200	195	180	165	165	160	155	145	130	115	125	120	115	105	90	190
H	225	210	205	195	190	175	160	160	155	150	140	125	110	120	115	110	100	85	185
I	220	205	200	190	185	170	155	155	150	145	135	120	105	115	110	105	95	80	180
J	215	200	195	185	180	165	150	150	145	140	130	115	100	110	105	100	90	75	175
K	210	195	190	180	175	160	145	145	140	135	125	110	95	105	100	95	85	70	170
L	205	190	185	175	170	155	140	140	135	130	120	105	90	100	95	90	80	65	165
M	200	185	180	170	165	150	135	135	130	125	115	100	85	95	90	85	75	60	160

NOTE.—See Price Instructions and Exceptions.

1 Not classified account lack of data.

Railroad Locomotive Fuel Prices

The minimum price of railroad locomotive fuel coal shall be 185 cents per net ton, f. o. b. mines.

Coaling locomotives at mine tipples.—An additional charge of not less than 15 cents per net ton shall be added to the minimum prices established for locomotive fuel, to cover the extra cost of coaling locomotives at mine tipples, when such service is performed.

Geographical Description of Consuming Market Areas

Markets in which District 11 coals are consumed embrace the States of Ohio, Indiana, Michigan, Kentucky, Illinois, Wisconsin, Iowa, Minnesota, Missouri, Kansas, Nebraska, North Dakota and South Dakota.

MINIMUM PRICE AREA No. 2—DISTRICT No. 12**PROPOSED MINIMUM PRICES**

In compliance with Order No. 249, of the Commission, the District Board for District No. 12 prepared a schedule of proposed minimum prices f. o. b. transportation facilities at the mines for kinds, qualities, and sizes of coal produced by the various Code Members within the District and such classification of coals and price variations as to mines and consuming market areas as it deemed proper and within the authority conferred by the Act. A copy thereof was transmitted to every Code Member within District No. 12, accompanied by a letter giving notice that a meeting of said Board would be held on a day therein designated, for the purpose of receiving and hearing objections or suggestions to said proposed schedule. For that purpose, a committee was appointed by said Board. Several Code Members appeared before said committee and were heard. Some changes were suggested as to the proposed minimum prices, although no formal protests were filed thereto. The committee also made its own suggestions as to changes in said schedule. A meeting of said Board was then called, and held, with a quorum present, at which time by appropriate resolution said minimum price schedule was amended so as to include those changes contained in the schedule designated "Schedule of Minimum Prices Proposed pursuant to Bituminous Coal Commission's Order No. 249," which was introduced into evidence, at the hearing conducted by the Commission at Chicago, Illinois, on November 21, 1938, as Exhibit No. 698. Copies of same were mailed to each Code Member, the District Board and the Commission. In order to standardize the textual form of said proposed schedule, at the request of the Commission, it was re-written, but not changed as to the proposed prices or classifications contained in Exhibit No. 698. Said changed proposal was introduced into the evidence as Exhibit No. 699.

The Secretary of District Board for District No. 12 and the Treasurer of said Board testified in support of said Proposed Schedule of Minimum Prices. These witnesses have had many years of experience in the coal industry in District No. 12, and they are familiar with the production, sales and marketing conditions therein.

District Board for District No. 12 is composed of 17 members, all of whom, with the exception of one, are coal mine operators of years of experience. They represent shaft mines, in about equal proportions as between truck and rail mines, with some representation of strip mines.

The Schedule of Minimum Prices Proposed by the District Board for District No. 12 and submitted to the Commission divides the District into four subdistricts.

Subdistrict No. 1 consists of Appanoose and Wayne counties, in the State of Iowa.

Subdistrict No. 2 consists of the counties of Davis, Jefferson, Keokuk, Lucas, Mahaska, Marion, Monroe, Muscatine, Scott, Van Buren, Wapello and Warren, in said state.

Subdistrict No. 3 consists of the counties of Boone, Dallas, Greene, Guthrie, Hamilton, Jasper, Polk, and Webster, in said state.

Subdistrict No. 4 consists of the counties of Adams, Page and Taylor, in said state.

The District Board for District No. 12 caused analyses to be made of the coals of several producers in various sections of said District. Said analyses were introduced into the evidence as Exhibit No. 704. Said exhibit contains the analyses of samples of lump, egg, and screenings from within said District and sets forth the percentages of moisture, volatile matter, fixed carbon, ash, sulphur and B. t. u. per pound thereof.

The coals of District No. 12 vary but slightly as to hardness; the coal industry within this district recognizes no difference in quality between the coals from one field and those from another, except as to sizes. They all move in season and have the same customer acceptance. About 40 per cent of the coal in the District is used for domestic purposes and about 60 per cent is used for industrial purposes and for railroad fuel.

The District Board for District No. 12 determined that the markets into which the producers of said district ship their coals are as follows: Iowa, Minnesota, Missouri, South Dakota, Nebraska, North Dakota and Kansas.

The Schedule of Minimum Prices Proposed by the District Board for District No. 12 contains ten size groups and one price classification, to wit: "A." The size groups are as follows: No. 1—6" Chunk and larger; No. 2—Lump, 2" and larger, 8" x 4", 6" x 4" and 6" x 3"; No. 3—Egg or Range, 8" x 2" and 6" x 2"; No. 4—Small Egg, 4" x 2" and 3" x 1½"; No. 5—Mine Run; No. 6—Nut, 1¼" x ¾"

and 2" x 1¼"; No. 7—Domestic Stoker, 1¼"—1" x ¾"; No. 8—Screenings, 2" x 0"; No. 9—Crushed Industrial Stoker, 2" x 0" and No. 10—Carbon, ¾" x 0". A description of and specifications for these size groups was introduced into the evidence as Exhibit No. 700. A footnote on page 4 of said Schedule (Exhibit No. 699), provides that the coal produced by each and every Code Member within District No. 12 is found to be of the same quality, except as to sizes, and shall be classified as one grade which shall be designated "Standard."

It was the unanimous opinion of the District Board for District No. 12 and of an expert witness who testified in support of said Schedule of Minimum Prices Proposed, that there is no difference in consumers' acceptance of the coals of District No. 12 and that there is no basis upon which the coal of any particular field can be classified or given a special price, except as to size. Any attempt to do so would disturb long established marketing practices and would be harmful to the producers. The coals of District No. 12, being of similar quality, are properly classified on a size basis only.

The differentials between the various size groups, as shown in Exhibit No. 701, were arrived at by the District Board in the following manner. The Board first set up a table of prices, as set forth in Exhibit No. 702, showing what it deemed to be correct price differentials in each subdistrict between the size groups, based on the knowledge and experience of the members of the Board in marketing coals from District No. 12. The recovery from such prices applied to the tonnage produced in 1937 for each size group in each subdistrict, namely \$2.7917 per net ton was considerably above the weighted average cost of Minimum Price Area No. 2, of \$1.772. The Board, to arrive at a realization equal as nearly as may be to the weighted average cost of the minimum price area, reduced the prices for each of the sizes by multiplying them by a percentage (63.47), sufficient to produce such weighted average yield of \$1.772.

It was stated on cross examination that the reduction of the minimum prices by a stated percentage resulted in a distortion of the price relationship between the size groups. It was also stated that the size differentials shown in Exhibits 701 and 702 reflect transportation differentials from subdistricts 1, 2, and 4, when compared to subdistrict 3. The inclusion of transportation differentials between the subdistricts was improper.

Exhibit No. 703 was prepared and introduced into the record to correct the erroneous relationships between the size groups created by the application of the percentage method and by the erroneous inclusion of transportation differentials. In this Exhibit, column 2 sets forth the "illustrative size differentials in f. o. b. mine prices" as given for subdistrict No. 3, Exhibit No. 702, the exhibit carrying a note that prices in other subdistricts

vary, but that the differentials shown in the exhibit are considered to be representative.

Inasmuch as these differentials excluding differences in transportation charges are representative, they are proper for price proposals under Section 4-II (a) of the Act for all Iowa coals.

Exhibit No. 703, instead of reducing the realization by the application of the percentage method, properly reduces the realization to the level of the price area cost of \$1.77 by subtracting from each of the proposed minimum prices the fixed amount of \$1.26, and produces a realization equal to the weighted average cost of the price area. The total weighted average realization for the district from the prices in Exhibit 703 is \$1.77 per net ton.

There was testimony to the effect that the price differentials contained in Exhibit 703 are the proper differentials f. o. b. mines between the various sizes of coal produced for shipment into the consuming markets of District No. 12; that they reflect the relative market value of the various kinds, qualities and sizes of coal produced in said District, excluding consideration of transportation charges; that they are just and equitable as between producers in said District and that they are based on actual market experience in the past and will not permit dumping.

No protests were filed against said Schedule.

And now upon the record herein, upon the evidence, both documentary and otherwise, and upon the above and foregoing facts found to exist, the Commission finds:

That the Schedule of Minimum Prices Proposed (Exhibit No. 698) submitted to the Commission by the District Board for District No. 12 should be corrected and revised in order that same may better conform to Order No. 249 of the Commission and to the provisions of Section 4-II (a) of the Act, and said schedule is hereby modified in the following respects:

That said schedule should be modified so as to conform to the revised schedule contained in Exhibit No. 699, as herein-after amended.

That the cover page of the proposed schedule contained in Exhibit No. 699 should be changed to the extent that "Note B" appearing thereon should be deleted, as it deals with matters which are provided for under Section 4-II (b) of the Act.

That for the purpose of maintaining uniformity with the schedules proposed for other districts, the initial, unnumbered paragraph at the top of page 3 of said schedule should be deleted. Said paragraph reads as follows:

"In determining minimum prices, the following instructions and exceptions shall be observed."

No. 26—5

That Item 3 on page 3 of said schedule should be deleted. Said item reads as follows:

"If any size is made for which a price is not designated herein, such shall be sold at not less than the price applicable to the next larger size."

In place thereof, the following should be inserted:

"When any size of coal is sold in which the maximum top or bottom size exceeds the sizes scheduled herein, then such coal must be included in the next higher priced size group and priced accordingly."

That Item 4 on page 3 of said schedule should be deleted. Said item reads as follows:

"All size designations herein are for round hole screens. When other types of screens are used, the round hole equivalent shall control the sizes."

That in place thereof, the following should be inserted:

"All sizes, herein are for round hole screens, or the bar screen equivalents shown herein. When other types of screens are used, the District Board, subject to the approval of the National Bituminous Coal Commission, shall determine the equivalents."

That the table of screen equivalents on page 3 of Exhibit No. 700 should be inserted in said schedule at the foot of the table of size groups.

That Item 9 on page 3 of said schedule should be deleted. Said item reads as follows:

"No coal shall be sold for shipment in railroad cars at less than the prices to be established for such coal shipped into the consuming marketing area where it is to be used."

The above deletion is necessary and proper because the item to be deleted refers to special prices to be established later for specific market areas under coordination.

Item 10 on page 3 of said schedule should be deleted. Said item reads as follows:

"Prices to be provided for herein will not include switching charges, and such charges, if any, must be added."

The above item is a matter properly for coordination.

That Item 11 on page 3 of said schedule should be deleted. Said item reads as follows:

"All coal sold in less than car load lots shall be sold at not less than the prices to be fixed for truck coal, except that such coal, when delivered to purchasers at locations with railroad track facilities owned or leased by such purchaser, may be sold at the minimum delivered price to be established for rail shipment to

such purchaser, but shall not be sold at less than such price."

The witness for the District Board stated that this item permits the delivery by truck to utilities, dealers, etc. with rail facilities at the same price as rail deliveries to these customers. However, inasmuch as this item refers to delivered prices and to differences in transportation methods and charges—matters for consideration under coordination—it should be deleted.

That Item 12 on page 3 of said schedule should be deleted. Said item reads as follows:

"Any Code Member not listed herein shall sell his or its coal at not less than the prices herein set out for the nearest producer in such Code Member's sub-district."

That in place thereof, the following should be inserted:

"Any Code Member not listed herein shall sell his or its coal at not less than the prices herein set out for the respective size groups."

That page 4 of said schedule should be deleted and that in place thereof there should be inserted a table of size groups re-written and re-arranged as follows:

District No. 12—Size Groups

Size group No.	Single screen	Double screen	
		Maximum top size	Maximum bottom size
1. Chunk.....	6" Lump and Larger		
2. Lump.....	Lump under 6"	8"	4"
3. Egg or Range.....		8"	2"
4. Small Egg.....		4"	2"
5. Nut.....		2"	1½"
6. Domestic Stoker.....		1½"	¾"
7. Mine Run.....			
8. Crushed Industrial Stoker.....	2" x 0"		
9. Screenings (Uncrushed).....	2" x 0"		
10. Carbon.....	¾" x 0"		

The foregoing makes no change in substance from the size groups proposed by the District Board (Exhibit No. 699), or in the size specification table in Exhibit No. 700. The changes are made so that the size groups are in descending order of size, with the single screened lumps on top, followed by the double screened sizes, the resultant sizes being placed at the bottom. The changes are made to accomplish uniformity and simplicity and the above table adequately describes and limits the size groups and in no way departs from the intent of the District Board.

The deletion of said page 4 will delete the note appearing at the bottom of said page which reads as follows:

"Quality.—The coal produced by each and every Code Member within District No. 12 is found to be of the same quality,

except as to sizes, and shall be classified as one grade, which shall be designated 'Standard.'

The deletion of the foregoing item is proper because the matter is fully covered in said schedule by the alphabetical list of Code Members, which shows price classifications by sizes.

That pages 5 and 6 of said schedule should be deleted. They contain the proposed minimum prices, but the proposed prices on these pages contain distorted price relationships between the various size groups and include transportation differentials between the subdistricts.

That the following should be inserted in place of pages 5 and 6 of said schedule:

District No. 12

[Prices in cents per net ton of 2,000 pounds]

Size group No.	Price classification	Price
1. Chunk.....	A	249
2. Lump.....	A	239
3. Egg or Range.....	A	229
4. Small Egg.....	A	224
5. Nut.....	A	199
6. Domestic Stoker.....	A	199
7. Mine Run.....	A	159
8. Crushed Industrial Stoker.....	A	149
9. Screenings (Uncrushed).....	A	89
10. Carbon.....	A	-26

Railroad Locomotive Fuel

Subdistrict 1.....	158
Subdistrict 2.....	158
Subdistrict 3.....	243

See Price Instructions and Exceptions.

The prices to be inserted as above indicated are those in column No. 4 of Exhibit No. 703. The evidence indicates that these prices reflect the proper differentials f. o. b. mines between the various sizes of coal and reflect the relative market value of the various kinds, qualities and sizes of coal produced in District No. 12, excluding the differences in transportation charges. The above price differentials are, in the opinion of the witness for the District Board, justifiable and equitable as between producers in the District; are based on actual market experience in the past, do not permit dumping and have due regard to the interests of the consuming public.

That to clarify said schedule and to make it conform to those of other districts, the following addition should be made at the bottom of page 5 thereof, "Proposed Minimum Prices," (Exhibit No. 699):

"See Price Instructions and Exceptions."

That said page 5 of said schedule, "Proposed Minimum Prices," (Exhibit No. 699), should be inserted after the alphabetical list of Code Members, the last page of which appears on page 15 thereof. The "Schedule of Subdistricts," which appears in the schedule (Exhibit No. 699) on page 17 thereof, should be inserted before said alphabetical list of Code Members. These changes as to

the order of the pages should be made for the sake of uniformity.

That on page 16 of the proposed schedule (Exhibit No. 699), the last line, reading: "subject to Notes A and B on the title page of this schedule," should be deleted, inasmuch as Note B on the title page has been deleted and the reference to Note A is unnecessary.

That in order to fully comply with the instructions of the Commission, there should be added to said schedule a final page, captioned: "Finis."

That the District Board for District No. 12, as directed in Order No. 249 of the Commission, proposed minimum prices free on board transportation facilities at the mines for kinds, qualities, and sizes of coals produced within the District, classification of coal and price variations as to mines and consuming market areas.

That the District Board for District No. 12, as directed in said Order No. 249 of the Commission, submitted to the Commission a schedule of such proposed minimum prices, together with the data upon which same was computed, including the factors considered in determining the price relationships.

That the minimum prices proposed by the District Board for District No. 12, as herein revised, amended and modified, reflect, as nearly as possible, the relative market value of the various kinds, qualities and sizes of coal produced within the District; are just and equitable as between producers within the District, have due regard to the interests of the consuming public and do not permit dumping.

That the minimum prices proposed by the District Board for District No. 12, for any kind, quality or size of coal for shipment into any consuming market area, as herein revised, amended and modified, are just and equitable between producers within said District.

That the minimum prices proposed by the District Board for District No. 12, as herein revised, amended and modified, yield a return per net ton for the District of \$1.77, which is equal as nearly as may be to the weighted average of the total costs per net ton, of the tonnage of Minimum Price Area No. 2, the Price Area in which District No. 12 is placed under the Act.

That the schedule of proposed minimum prices submitted to the Commission by the District Board for District No. 12, as amended, corrected, modified and revised as hereinabove set forth, conforms to Order No. 249 of the Commission and to the requirements of Section 4-II (a) of the Act, and as so amended, corrected, modified and revised, said schedule should be and the same is hereby approved by the Commission, to serve as a basis for the coordination provided for in Section 4-II (b) of the Act. A copy of said schedule, as amended, corrected, revised and modified, appears in the Appendix for District No. 12.

APPENDIX FOR DISTRICT NO. 12

SCHEDULE OF MINIMUM PRICES AS MODIFIED AND APPROVED TO SERVE AS A BASIS FOR COORDINATION

NOTE.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

F. W. McCULLOUGH,
Secretary.

Issued February 2, 1939.

Price Instructions and Exceptions

1. The schedules of prices proposed herein shall apply to all coal produced in District 12 as shown above.

2. These prices shall be subject to the uniform marketing rules and regulations hereafter issued by the National Bituminous Coal Commission.

3. When any size of coal is sold in which the maximum top or bottom size exceeds the sizes scheduled herein then such coal must be included in the next higher priced size group and priced accordingly.

4. All sizes herein are for round hole screens or the bar screen equivalents shown herein. When other types of screens are used, the District Board, subject to the approval of the National Bituminous Coal Commission, shall determine the equivalents.

5. In the sale of coal to destined points outside the boundary of the United States, prices stipulated herein are for payment in United States funds.

6. If, upon application of a producer, the Board finds that its coal or any part thereof is of such inherent nature that it cannot be prepared so that it will sell for the full regular established minimum price, it may be given such special minimum price by the Commission after notice to the Board as will permit it to be marketed as subquality coal. Such special price when once established shall apply to all such subquality coal of the producer until changed by the Commission after notice to the Board.

7. Coal that has been oiled, waxolized, chemically or otherwise specially treated, shall take a price of not less than ten cents (10¢) per ton additional for each such treatment; however, coal that has been washed shall take a price of not less than twenty cents (20¢) per ton additional.

8. Coal trucked or hauled by the producer or his representative to the railroad and shipped by rail shall take the same minimum price as though loaded from mine tipples directly into railroad cars.

9. Any code member not listed herein shall sell his or its coal at not less than

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Separately Shown—Continued

[illegible]

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Separately Shown—Continued

Code member	Mine name	Sub-dist. No.	Price classifications and size group numbers									
			1	2	3	4	5	6	7	8	9	10
Montgomery Coal Co.	Montgomery	2	A	A	A	A	A	A	A	A	A	
Moore, W. H.	Moore	2	A	A	A	A	A	A	A	A	A	
Morgan Valley Coal Co.	Morgan Valley	2	A	A	A	A	A	A	A	A	A	
Mulgrew & Sons Co.	Mulgrew	2	A	A	A	A	A	A	A	A	A	
Mystic Coal Co.	Mystic	2	A	A	A	A	A	A	A	A	A	
National Coal Co.	National	2	A	A	A	A	A	A	A	A	A	
National Coal Co., Inc.	National	2	A	A	A	A	A	A	A	A	A	
Nelson Coal Co., Inc.	Nelson	2	A	A	A	A	A	A	A	A	A	
New Block Coal Co.	New Block	1	A	A	A	A	A	A	A	A	A	
New Citizens Coal Co.	New Citizens	1	A	A	A	A	A	A	A	A	A	
New Deal Coal Co.	New Deal	1	A	A	A	A	A	A	A	A	A	
New Everist Coal Co.	New Everist	1	A	A	A	A	A	A	A	A	A	
New Market Coal Co.	New Market	2	A	A	A	A	A	A	A	A	A	
New Milford Coal Co.	New Milford	4	A	A	A	A	A	A	A	A	A	
New Riverside Coal Co.	New Riverside	3	A	A	A	A	A	A	A	A	A	
New Rock Valley Coal Co.	New Rock Valley	3	A	A	A	A	A	A	A	A	A	
New Star Coal Co.	New Star	1	A	A	A	A	A	A	A	A	A	
New Star Coal Co.	New Star	1	A	A	A	A	A	A	A	A	A	
No. 3 Coal Co.	No. 3	3	A	A	A	A	A	A	A	A	A	
Noble Coal Co.	Noble	3	A	A	A	A	A	A	A	A	A	
North Chardon	North Chardon	1	A	A	A	A	A	A	A	A	A	
North River Coal Co.	North River	1	A	A	A	A	A	A	A	A	A	
Norwalk Coal Co.	Norwalk	2	A	A	A	A	A	A	A	A	A	
Norwood-White Coal Co.	#7 Moran & #8 Herrold	3	A	A	A	A	A	A	A	A	A	
	Numa	3	A	A	A	A	A	A	A	A	A	
Oakdale Coal Co.	Oakdale	1	A	A	A	A	A	A	A	A	A	
O. & L. Coal Co.	O. & L.	2	A	A	A	A	A	A	A	A	A	
Ogden Superior Coal Co.	Ogden Superior	2	A	A	A	A	A	A	A	A	A	
O. K. Coal Co.	O. K.	3	A	A	A	A	A	A	A	A	A	
Old Carver Coal Co.	Old Carver	2	A	A	A	A	A	A	A	A	A	
Old King Coal Co.	Old King	2	A	A	A	A	A	A	A	A	A	
Old North End	Old North End	1	A	A	A	A	A	A	A	A	A	
Olive Coal Co.	Olive	2	A	A	A	A	A	A	A	A	A	
Olson Coal Co.	Olson	3	A	A	A	A	A	A	A	A	A	
Onder Coal Co.	Onder	3	A	A	A	A	A	A	A	A	A	
Oskalossa Coal Co.	Oskalossa #2	2	A	A	A	A	A	A	A	A	A	
Ottumwa Coal Co., Inc.	Ottumwa	2	A	A	A	A	A	A	A	A	A	
Owens Coal Co.	Owens	2	A	A	A	A	A	A	A	A	A	
Panora Coal Co.	Panora	3	A	A	A	A	A	A	A	A	A	
Panther Creek Coal Co.	Panther	3	A	A	A	A	A	A	A	A	A	
Patik Coal Co.	Patik	2	A	A	A	A	A	A	A	A	A	
Pearson Coal Co.	Pearson	4	A	A	A	A	A	A	A	A	A	
Pearson Coal Co.	Pearson	4	A	A	A	A	A	A	A	A	A	
Pee Wee Coal Co.	Pee Wee	2	A	A	A	A	A	A	A	A	A	
Pee Wee Coal Co.	Pee Wee	2	A	A	A	A	A	A	A	A	A	
Penrod Bros. Coal Co.	Penrod	1	A	A	A	A	A	A	A	A	A	
Pershing Fuel Co.	Pershing	2	A	A	A	A	A	A	A	A	A	
Peter & Burr Coal Co.	Peter & Burr	2	A	A	A	A	A	A	A	A	A	
Pike Coal Co.	Pike	2	A	A	A	A	A	A	A	A	A	
Pilot Mound Coal Co.	Pilot Mound	3	A	A	A	A	A	A	A	A	A	
Plano Coal Co.	Plano	3	A	A	A	A	A	A	A	A	A	
Plano Coal Co.	Plano	1	A	A	A	A	A	A	A	A	A	
Pleasant Valley Coal Co.	Pleasant Valley	1	A	A	A	A	A	A	A	A	A	
Porter Bros. Coal Co.	Porter Bros.	1	A	A	A	A	A	A	A	A	A	
Purdy Coal Co.	Purdy	1	A	A	A	A	A	A	A	A	A	
Purdy Coal Co.	Quality	1	A	A	A	A	A	A	A	A	A	
Raguna Coal Co.	Raguna	1	A	A	A	A	A	A	A	A	A	
Raguna Coal Co.	Raguna	3	A	A	A	A	A	A	A	A	A	
Rainbow Coal Co.	Rainbow	3	A	A	A	A	A	A	A	A	A	
Ramsay-Dooms Coal Co.	Ramsay-Dooms	1	A	A	A	A	A	A	A	A	A	
Ratcliff Coal Co.	Ratcliff	2	A	A	A	A	A	A	A	A	A	
Rathbun Coal Co.	Rathbun #3	2	A	A	A	A	A	A	A	A	A	
Rathbun Coal Co.	Rathbun	3	A	A	A	A	A	A	A	A	A	
Rathbun Coal Co.	Diamond Lump	1	A	A	A	A	A	A	A	A	A	
Red Bird Coal Co.	Red Bird	1	A	A	A	A	A	A	A	A	A	
Red Rock Coal Co.	Red Rock	1	A	A	A	A	A	A	A	A	A	
Reed, Frank Coal Co.	Reed	2	A	A	A	A	A	A	A	A	A	
Reese Coal Co.	Reese	2	A	A	A	A	A	A	A	A	A	
Rice Coal Co.	Rice	2	A	A	A	A	A	A	A	A	A	
Rice Coal Co.	Rice	3	A	A	A	A	A	A	A	A	A	
Rider Coal Co.	Rider	3	A	A	A	A	A	A	A	A	A	
Ridge Block Coal Co.	Ridge Block	2	A	A	A	A	A	A	A	A	A	
Riggen Coal Co.	Riggen	2	A	A	A	A	A	A	A	A	A	
River Slide Coal Co.	River Slide	2	A	A	A	A	A	A	A	A	A	
Roberts Coal Co.	Roberts	1	A	A	A	A	A	A	A	A	A	

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Separately Shown—Continued

Code member	Mine name	Sub-dist. No.	Price classifications and size group numbers									
			1	2	3	4	5	6	7	8	9	10
Wallace Coal Co.	Wallace	2	A	A	A	A	A	A	A	A	A	A
Wallace Coal Co.	Wallace	2	A	A	A	A	A	A	A	A	A	A
Walnut Creek Coal Co.	Walnut Creek	1	A	A	A	A	A	A	A	A	A	A
Walnut Valley Coal Co.	Walnut Valley	2	A	A	A	A	A	A	A	A	A	A
Warren Coal Co.	Warren	3	A	A	A	A	A	A	A	A	A	A
Welch, J. A.	Welch	2	A	A	A	A	A	A	A	A	A	A
Westcamp, Floyd Coal Co.	Westcamp	2	A	A	A	A	A	A	A	A	A	A
What Cheer Clay Products Co.	What Cheer	2	A	A	A	A	A	A	A	A	A	A
White Bros. Coal Co.	Mine #2	2	A	A	A	A	A	A	A	A	A	A
White Coal Co.	#1	3	A	A	A	A	A	A	A	A	A	A
White Coal Co.	White	2	A	A	A	A	A	A	A	A	A	A
White Ash Co-operative Mng. Co.	White Ash	2	A	A	A	A	A	A	A	A	A	A
White Eagle Coal Co.	White Eagle	2	A	A	A	A	A	A	A	A	A	A
Wignall & Jones Coal Co.	Wignall & Jones	2	A	A	A	A	A	A	A	A	A	A
Wignall Bros. Coal Co.	Wignall	3	A	A	A	A	A	A	A	A	A	A
Willhour, A. L. Coal Co.	Willhour	2	A	A	A	A	A	A	A	A	A	A
Williams Coal Co.	Williams	3	A	A	A	A	A	A	A	A	A	A
Wilson Bridge Coal Co.	Wilson Bridge	3	A	A	A	A	A	A	A	A	A	A
Wolf Creek Coal & Mng. Co.	Wolf Creek	3	A	A	A	A	A	A	A	A	A	A
Yeatsy Coal Co.	Yeatsy	2	A	A	A	A	A	A	A	A	A	A
Yeatsy & Wallace Coal Co.	Yeatsy	2	A	A	A	A	A	A	A	A	A	A
Yocum & Son	Yocum	1	A	A	A	A	A	A	A	A	A	A
Young Bros. Coal Co.	Young	2	A	A	A	A	A	A	A	A	A	A
Young Coal Co.	Young	1	A	A	A	A	A	A	A	A	A	A
Zaputill Coal Co.	Zaputill	1	A	A	A	A	A	A	A	A	A	A
Zenerville Coal Co.	Zenerville	3	A	A	A	A	A	A	A	A	A	A

Prices for Shipment Into All Market Areas for All Coal Other Than Coal Used for Railroad Locomotive Fuel

(Prices in cents per ton of 2,000 pounds and size group numbers)

Price classification	1	2	3	4	5	6	7	8	9	10
A	249	239	229	224	199	199	159	149	89	-26

All Coal for Railroad Locomotive Fuel—Prices in Cents per Net Ton of 2,000 Pounds

Sub-District 1: 158.

Sub-District 2: 158.

Sub-District 3: 243.

NOTE.—See Price Instructions and Exceptions.

Geographical Description of Consuming Market Areas to Which Prices Apply

The proposed minimum prices contained in this schedule will apply in all markets in which District 12 coals are consumed, which markets embrace the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.

MINIMUM PRICE AREA NO. 2—DISTRICT BOARD NO. 9

PROPOSED MARKETING RULES AND REGULATIONS

A witness for District Board No. 9, properly qualified as an expert in the marketing of coal in District No. 9, introduced into evidence as Exhibit No. 826 the marketing rules and regulations proposed by District No. 9 in compliance with Commission Order No. 250. The witness testified that these proposed rules and regulations were properly submitted to each Code Member within District No. 9, as directed by Order No. 250, and that the District Board did not receive any

protests from Code Members on such rules and regulations. The witness further testified that the clarifications, modifications and deletions in the rules proposed by the various District Boards reflected in Exhibit No. 825, introduced into evidence by the witness for the Marketing Division of the Commission, were, in his opinion, very desirable and reasonable and would certainly be applicable for District No. 9.

Rule 1 (I) of Section VII of Exhibit No. 825 is a modification of rule 2 of Section IX of the rules proposed by District Board No. 9. Neither the rule contained in Exhibit No. 825 nor the rule proposed by District Board No. 9 provides whether the current rate of interest to be charged is the rate of interest in the locality to which the coal is shipped to the vendee, or the rate in the locality in which the Code Member is located. We are of the opinion that, for the purpose of clarification, this rule should be modified so as to provide that the current market rate of interest which must be charged is the current rate in the locality to which the coal is shipped to the vendee.

Accordingly, we modify rule 2 of Section IX of the rules proposed by District Board No. 9 to read as follows:

Where payment is made by note, trade acceptance, or other form of indebtedness, or where payment is made under any circumstances after the due date of the account, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

In order to make clear that the rule prohibiting deductions or allowances from invoice prices does not prohibit Code Members from conducting advertising campaigns seeking to increase the use of coal where the expenses for such campaigns are not paid by means of a

deduction or allowance from the invoice price, we are of the opinion that rules 1 and 2 of Section XI of the rules proposed by District Board No. 9 should be modified to read as follows:

1. No deduction or allowance from invoice prices shall be granted by any Code Member or his sales agent to any purchaser for advertising.

2. Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a Code Member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

Rule 1 under the caption *Coal Confiscated or Lost in Transit* of Section XI of the rules contained in Exhibit No. 825 was not proposed by District Board No. 9. However, as previously stated, the witness for District No. 9 was of the opinion that the rules contained in Exhibit No. 825 were reasonable for District No. 9. The rule relating to coal confiscated or lost in transit contained in Exhibit No. 825 does not state whether the established minimum price to be charged for such coal is the price for the coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss. We are of the opinion that whichever of these two established prices is the higher should be charged by the Code Member. The Code Member in any event is entitled to the minimum price for the coal for shipment to the destination and use to which the coal was sold. However, if the established minimum price for sale to the carrier is higher than such price, it is necessary to provide that the price for sale to the carrier must be charged for the reason that otherwise evasion would be made possible by means of confiscation. Accordingly, we modify rule 1 under the caption *Coal Confiscated or Lost in Transit* of Section XI of Exhibit No. 825 to read as follows:

All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

Exhibit No. 825 contains no rule relating to the crushing of coal. District Board No. 9 in Section X proposed a rule providing for the registration of crushing or pulverizing devices. The witness for the Marketing Division of the Commission, who introduced Exhibit No. 825 into evidence, stated that no rules relating to substitution or crushing are contained in the Exhibit, and that the Exhibit is not to be con-

strued as representing any modification or deletion of such rules as they may have been proposed by the various district boards. Upon the basis of the testimony of the witness that such rule is reasonable, we find that the rule relating to the registration of crushing and pulverizing of coal contained in Section X of the rules proposed by District Board No. 9 should be approved for the purpose of coordination.

Paragraph 12 of Section I of Exhibit No. 825 defines the term "retailing." This term does not appear in rules contained in Exhibit No. 825. However, the term "retailer" does appear in paragraphs 11 and 12 of Section 4 II (i) of the Act and we are of the opinion that Section 4 II (i) of the Act should be promulgated as a part of the marketing rules and regulations. It is likewise our opinion that the term "retailer," as such term is used in paragraphs 11 and 12 of Section 4 II (i) of the Act means a person who purchases coal for resale and sells such coal in lots or upon conditions other than those which would entitle him to a discount under rules and regulations promulgated by the Coal Commission pursuant to Section 4 II (h) of the Act. Accordingly, we delete the definition of "retailing" contained in paragraph 12 of Section I of Exhibit No. 825 and approve the following definition of a "retailer":

A "retailer" is a person who buys coal for resale and sells such coal in lots or upon conditions other than those which would entitle him to a discount under rules and regulations promulgated by the Coal Commission pursuant to Section 4 II (h) of the Act.

Upon the basis of the testimony of the witness for District Board No. 9 that the rules contained in Exhibit No. 825 are desirable and reasonable, we find that the rules proposed by District Board No. 9 in Exhibit No. 826 should be modified to conform to the rules contained in Exhibit No. 825 except as we have already stated otherwise.

Accordingly, we find that the following rules and regulations incidental to the sale and distribution of coal by Code Members in District No. 9 are reasonable, not inconsistent with the requirements of Section 4 of the Act and conform to the standards of fair competition established in the Act:

MARKETING RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DISTRICT NO. 9 AS PROPOSED BY DISTRICT BOARD NO. 9 AND AS APPROVED, DISAPPROVED, OR MODIFIED FOR THE PURPOSE OF COORDINATION

Section I—Definitions

1. The term "person" as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, cooperatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.

2. A "sales agent" is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: *Provided*, That "sales agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, whose sole compensation is a stated salary per week, per month, or per year, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.

3. A "commission" is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.

4. A "registered distributor" is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.

5. A "spot order" is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days from the effective date of the order, such effective date to be not more than fifteen (15) days from the date upon which the order was accepted.

6. A "contract" is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than the maximum period specified for a spot order.

7. A "quotation" is an offer to sell coal which the offerer may withdraw prior to its being acted upon by the offeree.

8. An "option" is an offer to sell coal acceptable within a time certain, during which time the offerer may not withdraw the offer without the consent of the offeree.

9. A "commitment" is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.

10. "Coal Commission" as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.

11. "Act" as used herein shall mean the Bituminous Coal Act of 1937.

12. A "retailer" is a person who buys coal for resale and sells such coal in lots or upon conditions other than those which would entitle him to a discount under rules and regulations promulgated by the Coal Commission pursuant to Section 4 II (h) of the Act.

13. "District Board" as used herein, shall mean any District Board established under the provisions of Section 4, Part I (a) of the Act.

14. "Statistical Bureau" shall mean, unless otherwise specifically stated, the Statistical Bureau of the Commission for the District in which the coal involved in any transaction is produced, or the

District in which is located a mine of a code member affected by any order or regulation.

15. "Minimum Price" shall mean a minimum price established and made effective by the Coal Commission.

16. "Maximum Price" shall mean a maximum price established and made effective by the Coal Commission.

17. The term "producer" includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.

18. The terms "reconsignment" and "diversion" as used herein shall mean the change in the original consignee or in the destination or route.

19. The term "transportation facilities" means railroad cars, ships, barges, trucks, or any other facilities used or useful in the transportation of coal.

20. A "code member" means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.

21. The term "domestic market" shall include all points within the continental United States and Canada, and car-ferry shipments to the Island of Cuba. Bunker coal delivered to steamships for consumption thereon shall be regarded as shipped within the domestic market.

22. "Cargo shipment" is a quantity of coal loaded in a vessel, boat or barge for transportation via water.

23. "Bunker coal" or "vessel fuel" is that coal used aboard a boat or vessel for consumption thereon.

24. "Coal" as used herein shall mean bituminous coal.

25. The term "bituminous coal" includes all bituminous, semi-bituminous and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.

26. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Section II—Sales Agents

1. All appointments of Sales Agents by Code Members or their agents or authorized representatives shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.

2. Each Code Member shall be responsible for the compliance by all his Sales Agents and agents and employees of Sales Agents and agents with the provisions of the Bituminous Coal Code and of all rules and regulations, promulgations and determinations of the Coal Commission.

3. Each Code Member shall require all his sales agents clearly to set forth upon any offer, contract, spot order, invoice,

and statement of account covering coal sold or to be sold, the name of such Code Member principal, and the name of the mine or mines from which shipment was made or is to be made. If the name of the sales agent also appears in the transaction, then the above mentioned forms shall also disclose the fact of agency relationship with the Code Member principal.

4. (A) Every contract for the appointment of a sales agent by Code Members or by agents or authorized representatives of Code Members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, including the amount or basis of the sales agent's commission. Certified copies of all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.

(B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.

(C) Upon the expiration, termination, or rescission of any sales agency contract, the Code Member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.

5. (A) As to all coal sold by a Code Member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code Member at his principal place of business or at a regularly established sales office, such Code Member shall, not later than the fifteenth day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.

(B) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen employed at the principal place of business or a regularly established sales office of the sales agent.

(C) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau or Bureaus a statement showing the names and addresses of distributors to whom the Code Member or his sales agents

sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.

6. Within twenty (20) business days after the effective date of these rules and regulations, each Code Member shall file with the Coal Commission a list showing the names and addresses of all his sales agents. Upon any change in said list, the Code Member shall notify the Coal Commission within ten (10) business days after such change takes place.

7. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published monthly by the Coal Commission.

8. All agency contracts and other information filed by Code Members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code Member from whom the same shall have been obtained, except where such disclosure is required in any proceeding before the Coal Commission by way of enforcement of the Act or upon the order of any court of competent jurisdiction.

9. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of a Code Member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent:

(a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and

(b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as all proper Orders of the Commission, and

(c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.

10. No commission shall be paid to a sales agent by a Code Member where the coal is delivered or sold to any person who owns such sales agent or who financially or otherwise controls such agent.

11. When any commissions are paid to a sales agent on a tonnage basis, the Code Member shall not include in the computation of such commissions any part of the tonnage of coal sold by him to the sales agent, whether for consumption or resale.

12. No Code Member shall employ any person or appoint any sales agent at a compensation obviously disproportionate to the ordinary value of the service or services rendered and whose employment

or appointment is made with the primary intention and purpose of securing a preferment with a purchaser or purchasers of coal.

13. Subject to further order of the Coal Commission, the amount of commission to be paid by a Code Member to his sales agent shall be fixed by agreement of the parties, subject, however, that upon complaint of violation of the unfair methods of competition, as provided in the Act, the amount of such commission shall be subject to review by the Coal Commission.

Section III—Discounts

1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.

2. Code Members or their sales agents may allow discount from minimum prices or sales of coal to registered distributors, not in excess of the maximum discount or price allowance prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on any such sale.

3. Except as expressly authorized in rules and regulations or orders promulgated by the Coal Commission, no Code Member or sales agent may grant or allow any discount or reduction, including any allowance for shipping on a Government Bill of Lading, from the applicable minimum prices upon the sale of coal to any person, including agencies of the Federal Government or agencies of state or local governments.

4. Every sale of coal to a distributor upon which a discount is allowed shall be made subject to the express condition that the distributor is authorized to receive the discount.

Section IV—Limitation of Orders Agreements, Options and Quotations

1. Subject to further order of the Coal Commission, no Code Member or sales agent of the Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement or order: *Provided, however,* That contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with agencies of State or local governments, where the contract is entered into through competitive bidding, at the following applicable minimum prices:

(a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum prices in effect at the time of the making of the agreement;

(b) For deliveries thereafter, at not less than the applicable minimum prices in effect at the time of delivery.

Provided, further, That contracts for periods not exceeding one (1) year at prices not less than the said applicable minimum prices may be made with agencies of the Federal Government or with such agencies of the State or local governments, in the absence of competitive bidding, where by virtue of an express exemption in the statute or ordinance such agencies may enter into contracts for the purchase of coal without regard to competitive bidding.

2. While the preceding rule is in effect, no option may be given by a Code Member or sales agent for the purchase of coal. When the above rule is suspended or revoked by the Coal Commission, options for the sale of coal may be given for a period not exceeding fourteen (14) days. No options may be given at a price less than the applicable minimum price in effect at the time of the giving of the option. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the option shall not have been exercised at that time, the option thereupon shall become null and void: *Provided, however,* That in connection with offers to sell to the United States Government, or States or political subdivisions thereof, options may be given for a period not exceeding forty-five (45) days from the date of the offer or from the final date for the filing of offers.

3. Quotations may also be given for a period of not exceeding fourteen (14) days. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the quotation shall not have been accepted at that time, the quotation thereupon shall become null and void.

4. Every quotation and option shall provide that it is made subject to the provisions of the Marketing Rules and Regulations of the Coal Commission.

5. All quotations and options must be made or confirmed in writing. Every Code Member, or his sales agent, shall require of his offeree that the acceptance of a quotation or the exercise of an option be in writing.

Section V—Spot Orders

1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.

2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code Member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provision of the order:

"(a) No shipment consigned to any destination may be reconsigned or diverted without the consent of the seller to be confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable mini-

mum price for such coal at the time of the reconsignment or diversion for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.

"(b) The coal shipped pursuant to this order is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied.

"(c) If shipments called for by this order are not completed within thirty (30) days from the effective date of this order, the unfilled portion of the order shall not be delivered."

3. In any case where a sale is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (a) of this section without first securing the consent of his Code Member principal to be confirmed in writing.

4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the written confirmation thereof and such order or written confirmation thereof shall specifically contain all the terms required by Rule 1 of Section VI of these Marketing Rules and Regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof, the Code Member or his sales agent shall file with the Statistical Bureau or Bureaus a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau or Bureaus in the same manner.

5. All spot orders for the sale of coal, the minimum price of which is subject to seasonal increase, shall provide that the price payable thereunder shall not be less than the price to be in effect at time of delivery as established at the time of the making of the spot order.

Section VI—Contracts

Upon the revocation or suspension of rule 1 of Section IV of these Marketing Rules and Regulations, Code Members or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal upon the following terms and conditions:

1. Every contract shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal, the number of cars or tonnage to be shipped, the name

of the Code Member and the name of the originating mine, and, where the coal is purchased for consumption, the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) covering a buyer's requirements and stating the estimated tonnage to be shipped with an allowable overshipment of not exceeding ten (10) per cent of such estimated tonnage.

The provisions of the rule stated in the foregoing paragraph relating to quantity shall not apply to contracts made with agencies of the Federal, State or local governments in case the terms required to be submitted in a bid or offer for such contract are in conflict with such provisions.

2. No contract for the sale of coal shall provide for deliveries to commence at a date later than ninety (90) days from the date upon which such contract is entered into.

3. No contract shall be made at a price below the applicable minimum price as established by the Coal Commission at the time of the making of the contract for the coal to be sold thereunder, and no coal may be delivered upon a contract at a price below such applicable minimum price.

4. All contracts for the sale of coal the minimum price of which is subject to seasonal increase, shall provide that the price payable thereunder shall not be less than the price to be in effect at the time of delivery as established at the time of the making of the contract.

5. No contract shall provide for delivery over a period in excess of twelve (12) months except by special permission and approval of the Coal Commission, upon a showing of necessity of meeting the long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.

6. Any change in the terms of a contract, not in violation of these Rules and Regulations, shall be evidenced by a written agreement and shall conform to all the requirements set forth in these Rules and Regulations.

7. A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau or Bureaus, within fifteen (15) business days from the date of the making of the agreement. Such report shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within (15) business days from the date of execution of such contract or agreement for modification: *Provided, however,* That a report of the commitment need not be filed if a copy of the contract is filed within fifteen (15) business days.

8. Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provision of the contract:

"(a) This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937 and the proper orders and regulations issued thereunder by the National Bituminous Coal Commission.

"(b) No shipment consigned to any destination point may be reconsigned or diverted without the consent of the seller to be confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of the reconsignment or diversion for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.

"(c) The coal shipped pursuant to this contract is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."

9. In any case where a contract is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in item 8 (b) of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.

10. The making of a contract for the sale of coal at a price below the minimum or above the maximum therefor established by the Commission at the time of the making of the contract shall constitute a violation of the Code and such contract shall be invalid and unenforceable.

11. No contract shall be made for the sale of coal for delivery after the expiration date of the Act at a price below the minimum or above the maximum therefor established by the Coal Commission and in effect at the time of making the contract.

Section VII—Terms of Payment

1. The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his sales agent, through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

(A) On rail, river, ex-river, or truck shipments, the date of payment of in-

voices for coal sold shall be on or before the twentieth day of the month following the month in which shipment was made.

(B) On tidewater cargo shipments the date of payment shall be not more than thirty (30) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for tidewater cargo shipment, on or before the twentieth day of the month following the month in which the coal is dumped.

(C) Payment for all tidewater Bunker coal supplied for foreign vessels shall be by cash on delivery or by master's draft on owners in United States currency at not exceeding fifteen (15) days' sight at supplier's option. When drafts are accepted in payment, all bank charges for collection, exchange, etc., shall be for owner's account. Payment for tidewater bunker coal supplied for American vessels shall be made on or before the twentieth day of the month following delivery.

Payment for coal shipped for vessel fuel, and delivered into vessels at ports on the Great Lakes or tributary waters thereof, shall be made on or before the twentieth (20th) day of the month following such delivery.

(D) On lake cargo shipments, the date of payment shall be not more than sixty (60) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for lake cargo shipments, on or before the twentieth (20th) of the second month following the month in which dumped.

(E) On all coal sold to railroads, the date of payment shall be on or before the twenty-fifth (25th) day of the month following the date of shipment.

(F) Invoices shall be paid in full in United States currency, or funds equivalent thereto, not later than the due date.

(G) No portion of the sale price may be withheld by agreement between the buyer and the seller based upon any unadjusted claim of the buyer.

(H) No sale, delivery, or offer for sale of coal shall be made upon any condition, express or implied, that any portion of the sale price may be withheld by the buyer, or deposited in escrow, pending or based upon a determination of the constitutionality of any provision of the Act, of the jurisdiction of the Coal Commission, or the validity or applicability of any order of the Coal Commission.

(I) Where payment is made by note, trade acceptance or other form of indebtedness, or where payment is made under any circumstances after the due date of the account, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

(J) Freight on all-rail or ex-river shipments shall not be paid by a Code Member, or his sales agent, except to prepay stations as published in current railway tariffs or on shipments to the United

States Government, States or political subdivisions thereof. Where freight is thus prepaid, the amount thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.

(K) No Code Member shall accept as payment in full for any account for the sale of coal any amount which is less than the applicable minimum price for the quantity of coal involved. Provided, however, that a Code Member may enter into a bona fide general creditors' composition with other creditors of a defaulting purchaser. A copy of such creditor's composition shall be filed with the Statistical Bureau within ten (10) business days from the date of making such composition.

(L) The agreement by a Code Member, expressed or implied, to extend the credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the Code.

Section VIII—Use of Coal Analyses

1. Analyses of coal shall not be utilized by a Code Member, or his sales agent, in selling or offering for sale any coal produced by the Code Member, whether or not the analysis is a term in the offer or sale, unless such Code Member shall have filed with the Statistical Bureau and the District Board for the District in which the coal is produced, a report of the analysis or analyses as used or proposed to be used by him. Such report shall show the following:

(a) The name of the Code Member Producer.

(b) The name of the mine.

(c) The name or geological number of the seam or seams from which the coal is produced.

(d) The name of the size, and, if screened, the dimension or dimensions of the screen or screens over and/or through which the coal is prepared.

(e) Whether the analysis is representative of the entire production of such size of coal, or whether it represents only a portion of such production segregated by selective mining, selective preparation, actual analyses made at the mine, or in any other manner.

(f) That such analysis is representative of the grade and size of the coal as regularly produced by the Code Member and as loaded directly into transportation facilities for shipment to market and that the Code Member is prepared to make deliveries of coal of substantially the quality and character as shown by the analysis.

(g) That each such analysis is not less than a proximate analysis showing moisture content, ash, volatile matter, fixed carbon, sulphur and British thermal units and ash softening temperature.

2. Every analysis used in selling, or offering for sale, any particular kind,

quality, or size of coal shall be accompanied by a statement to the effect that a copy of such analysis has been properly filed with the Statistical Bureau, the Coal Commission and the District Board.

3. All reports of analyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time during office hours by any interested person, and may be considered by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the Code Member.

4. A copy of any analysis of the coal of a Code Member made by or on behalf of a consumer and accepted by the Code Member as the basis for an adjustment of price under any contract or spot order shall be filed by the Code Member with the Statistical Bureau, the Coal Commission and the District Board, within five (5) business days after such adjustment is made.

5. From and after the effective date of these Rules and Regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: *Provided*, That where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for sub-standard preparation or quality under Section X of these Marketing Rules and Regulations.

Section IX—Resale of Coal Refused in Transit or at Destination

1. Where coal is refused by a consignee in transit or at destination, the Code Member may sell the same at the best obtainable price, provided that in each case the Code Member shall file with the Statistical Bureau, and the District Board for the District in which the coal was produced, within five (5) business days from the date of such resale, a statement giving the following information:

- (a) Name of consignee.
- (b) Address of the consignee.
- (c) Original destination of the coal.
- (d) Name of Code Member.
- (e) Originating mine.
- (f) The grade and size of coal shipped.
- (g) Price at which coal sold.
- (h) Reasons for the refusal.
- (i) Facts resulting from the investigation of the complaint.
- (j) Name of ultimate purchaser upon resale.
- (k) Address of purchaser upon resale.
- (l) Ultimate destination of the coal.
- (m) Price received by the seller upon resale.
- (n) Amount of commission, if any, paid upon the resale.

(o) A copy of the carrier's notice of refusal or a notice of reconsignment and such other pertinent information and facts as may be offered in proof of the necessity for such resale.

(p) A signed and verified statement that the provisions of the Code and the Marketing Rules and Regulations of the Coal Commission other than as to price have not been violated or evaded.

2. All Code Members shall properly furnish to the District Board and to the Statistical Bureau of the Coal Commission for the District in which the coal originated, full reports of all reconsignments, and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.

Section X—Substandard Preparation or Quality

1. Where any claim of allowance or counterclaim is requested by a buyer for any delivery of coal claimed to be substandard in preparation or quality, or where it is claimed by the buyer that due to an error on the part of the shipper the buyer has incurred additional and extraordinary expense in accepting the shipment, the Code Member or his sales agent may, within a reasonable time after delivery of the coal, make settlement and agree with the buyer upon an amount reasonably to be deducted for such inferior coal or on account of such error, and may accept payment therefor at less than the applicable minimum price: *Provided*, That in each such case the Code Member shall within five (5) business days after granting such allowance file with the District Board and the Statistical Bureau of the Coal Commission a verified statement giving the following information:

(a) The name and address of the consignee and the reason for the request for the allowance.

(b) The price at which the coal was sold, the tonnage delivered, the name of the mine, the Code Member, the date of shipment, the grade and size of coal, the destination, and the amount of allowance or adjustment made.

(c) Such other pertinent information and facts as may be offered in proof of the necessity for such reduction or allowance.

(d) A statement that the adjustment has not been made with the purpose or intent of evading the price provisions of the Act.

The Code Member shall also file, together with the statement, a written claim duly executed by or on behalf of the buyer and verified by affidavit, setting forth the amount claimed by way of deduction and the reasons for the complaint.

2. All such adjustments and allowances shall be subject to review by the Coal Commission.

Section XI—Crushing and Pulverizing Coal

1. Each code member who maintains and operates at his mine or at any facility used in preparing coals for market, any crushing or pulverizing device, shall register such device with the Statistical Bureau of the Coal Commission.

2. Such information shall include the following:

- (a) Name and address of code member.
- (b) Name of mine or facility at which device is located.
- (c) Name and style or type of crushing or pulverizing device.
- (d) Hourly capacity of device.
- (e) Sizes of coal resulting from crushing or pulverizing.
- (f) Number of tons crushed in 1936 and in each month of 1937.

Section XII—Miscellaneous General

1. The minimum prices established by the Commission shall not apply to coal sold and shipped outside the domestic market as defined in the Act and in these Marketing Rules and Regulations.

2. Maximum prices established by the Commission shall not apply to coal sold and shipped outside the continental United States.

3. No coal shall be sold or delivered or offered for sale at a price below the minimum or above the maximum therefor established by the Commission, and the sale or delivery or offer for sale of coal at a price below such minimum or above such maximum shall constitute a violation of the Code: *Provided*, That the provisions of this paragraph shall not apply to a lawful and bona fide written contract entered into prior to June 16, 1933, which has been filed with the Coal Commission.

4. If, in converting a net or gross ton price, freight rate or freight rate differential, the calculation extends to more than 3 decimals, and the 4th decimal is 0.0005 or more, it shall be added as 0.001, and if under 0.0005 it shall be eliminated.

5. All coal shall be sold and invoiced on a price per ton basis, and all coal must be sold and invoiced under the size, price classification and other designation therefor in the price schedule published by the Coal Commission.

6. Failure to file information required by these Marketing Rules and Regulations or the filing of false information, wilfully made, will subject the party failing to file the information required, or the party so filing, to the penalties of the Act and other penalties imposed by law.

Advertising

1. No deduction or allowance from invoice prices shall be granted by any Code Member or his sales agent to any purchaser for advertising.

2. Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a Code Member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

Screening for Buyer's Account

1. The screening of mine run or re-screening of other grades of coal, sold and billed as such, for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited.

Coal Confiscated or Lost in Transit

1. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

Revision of Marketing Rules and Regulations

1. These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

UNFAIR METHODS OF COMPETITION

In accordance with the provisions of Section 4 II (i) of the Act, the following practices with respect to coal are unfair methods of competition and shall constitute violations of the Code:

1. The consignment of unordered coal, or the forwarding of coal which has not actually been sold, consigned to the producer or his agent: Provided, however, that coal which has not actually been sold may be forwarded, consigned to the producer or his agent at rail or track yards, tidewater ports, river ports, or lake ports, or docks beyond such ports, when for application to any of the following classes: Bunker coal, coal applicable against existing contracts, coal for storage (other than in railroad cars) by the producer or his agent in rail or track yards or on docks, wharves, or other yards for resale by the producer or his agent.

2. The adjustment of claims with purchasers of coal in such manner as to grant secret allowances, secret rebates, or secret concessions, or other price discrimination.

3. The prepayment of freight charges with intent to or having the effect of granting a discriminatory credit allowance.

4. The granting in any form of adjustments, allowances, discounts, credits, or refunds to purchasers or sellers of coal, for the purposes or with the effect of

altering retroactively a price previously agreed upon, in such manner as to create price discrimination.

5. The predating or postdating of any invoice or contract for the purchase or sale of coal, except to conform to a bona-fide agreement for the purchase or sale entered into on the predate.

6. The payment or allowance in any form or by any device of rebates, refunds, credits, or unearned discounts, or the extension to certain purchasers of services or privileges not extended to all purchasers under like terms and conditions, or under similar circumstances.

7. The attempt to purchase business, or to obtain information concerning a competitor's business by concession, gifts, or bribes.

8. The intentional misrepresentation of any analysis or of analyses, or of sizes, or the intentional making, causing, or permitting to be made, or publishing, of any false, untrue, misleading, or deceptive statement by way of advertising, invoicing, or otherwise concerning the size, quality, character, nature, preparation, or origin of any coal bought, sold, or consigned.

9. The unauthorized use, whether in written or oral form, of trade-marks, trade names, slogans, or advertising matter already adopted by a competitor, or any deceptive approximation thereof.

10. Inducing or attempting to induce, by any means or device whatsoever, a breach of contract between a competitor and his customer during the term of such contract.

11. Splitting or dividing commissions, brokers' fees, or brokerage discounts, or otherwise in any manner directly or indirectly using brokerage commissions or jobbers' arrangements or sales agencies for making discounts, allowances, or rebates, or prices other than those determined under this Act, to any industrial consumer or to any retailers, or to others, whether of a like or different class.

12. Selling to, or through, any broker, jobber, commission account, or sales agency, which is in fact or in effect an agency or an instrumentality of a retailer or an industrial consumer or of an organization of retailers or industrial consumers, whereby they are * any of them secure either directly or indirectly a discount, divided, allowance, or rebates, or a price other than that determined in the manner prescribed by this Act.

13. Employing any person or appointing any sales agent, at a compensation obviously disproportionate to the ordinary value of the service or services rendered, and whose employment or appointment is made with the primary intention and purpose of securing preferment with a purchaser or purchasers of coal.

* So in original.

PENALTIES

Section 5 (b) of Bituminous Coal Act:

The membership of any such coal producer in such code and his right to an exemption from the taxes imposed by section 3 (b) of this Act, may be revoked by the Commission upon written complaint by any code member or district board, or any State or political subdivision of a State, or the consumers' counsel, after a hearing, with thirty days' written notice to the member, upon proof that such member has wilfully violated any provision of the code or any regulation made thereunder; and in such a hearing any code member or district board, or any State or political subdivision of a State, or the consumers' counsel, or any consumer or employee, and the Commissioner of Internal Revenue, shall be entitled to present evidence and be heard: Provided, that the Commission, in its discretion, may in such case make an order directing the code member to cease and desist from violations of the code and regulations made thereunder and upon failure of the code member to comply with such order the Commission may apply to a circuit court of appeals to enforce such order in accordance with the provisions of subsection (c) of section 6 or may reopen the case upon ten days' notice to the code member affected and proceed in the hearing thereof as above provided.

Section 5 (c) of Bituminous Coal Act:

Any producer whose membership in the code and whose right to an exemption from the tax imposed by section 3 (b) of this Act shall have been revoked and canceled may apply to the Commission and shall have the right to have his membership in the code restored upon payment by him to the United States of double the amount of the tax provided in Section 3 (b) upon the sales price at the mine, or the market value at the mine if disposed of otherwise than by sale at the mine, or if sold otherwise than through an arms' length transaction, of the coal sold or disposed of by the code member in violation of the code or regulations thereunder (but in no case shall such sales price or market value be taken to be less than the minimum price established by the Commission for such coal and in effect at the time of such sale or other disposal), as found by the Commission under subsection (b) hereof. The Commission shall thereupon certify to the Commissioner of Internal Revenue and to the collector of internal revenue for the internal revenue collection district in which the producer resides the amount of the required payment as found under clause (5) of subsection (b), and upon payment of such amount to the Commissioner or the collector such officer shall notify the Commission thereof.

Section 10 (c) of Bituminous Coal Act:

If any producer required by this Act or the code or regulation made thereunder to file a report shall fail to do so within the time fixed for filing the same, and such failure shall continue for fifteen days after notice of such default, the producer shall forfeit to the United States the sum of \$50 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the producer has his principal office or in any district in which he shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeiture.

Section 35 of the Criminal Code as amended by the Act of June 18, 1934, c. 587, 48 Stat. 996 (U. S. C., Title 18, sec. 80):

Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and wilfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

Section 37 of the Criminal Code
(U. S. C. 88):

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both. (R. S. Sec. 5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1909, c. 321, sec. 37, 35 Stat. 1086.)

MINIMUM PRICE AREA No. 2—DISTRICT
BOARD No. 11

PROPOSED MARKETING RULES AND
REGULATIONS

A witness for District Board No. 11, properly qualified as an expert in the marketing of coal in that District, introduced into evidence as Exhibit No. 822 the rules and regulations proposed by District Board No. 11 pursuant to Commission Order No. 250. The witness testified that these rules were submitted to each Code Member within District No. 11 and that the District Board did not receive any protests from Code Members on such rules.

The witness further testified that the modifications, clarifications, deletions and additions to the rules proposed by District No. 11, reflected by the rules contained in Exhibit No. 825, are reasonable with certain exceptions to which the witness specifically testified. Furthermore, it was the opinion of the witness, with the exceptions which he specifically noted that the rules proposed by District No. 11 should be modified to conform to the rules contained in Exhibit No. 825. The witness took exception to sub-paragraphs (a) and (b) of rule 2 of Section V and sub-paragraphs (b) and (c) of rule 8 of Section VI of Exhibit No. 825. These rules provide in effect that where coal is diverted to a destination or use other than that specified in the contract, the

seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of the diversion for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied. The witness stated that the minimum price to be paid in the case of reconsignment or diversion should, in his opinion, be the minimum price in effect at the time of the making of the contract and not the minimum price in effect at the time of the reconsignment or diversion. The witness stated that the requirement that the minimum price for diverted coal be the minimum price in effect at the time of the diversion would work a severe hardship on distributors who purchase coal for delivery over a stated period of time in the event that minimum prices higher than the contract prices were in effect at the time of the reconsignment or diversion, since it is a common practice with distributors to have coal consigned to a certain destination and then reconsigned so as to avoid disclosing to Code Members the name of their customers. The witness further was of the opinion that unless the minimum price in effect at the time of the making of the contract governs coal which has been diverted, Code Members could not make contracts at the established minimum price in effect at the date of the making of the contract, which minimum price would remain constant through the life of the contract. We are of the opinion that effective administration of minimum prices requires that the price to be charged for coal which is diverted or reconsigned should be the price in effect at the time of the diversion or reconsignment for the destination to which the coal is actually shipped and for the use to which it is actually applied. Otherwise evasion of increased minimum prices could be accomplished by reconsigning or diverting coal sold at the minimum price in effect prior to the increase.

Rule 1 (I) of Section VII of Exhibit No. 825 is a modification of rule 6 of Section VIII of the rules proposed by District Board No. 11. Neither the rule contained in Exhibit No. 825 nor the rule proposed by District Board No. 11 provides whether the current rate of interest to be charged is the rate of interest in the locality to which the coal is shipped to the vendee, or the rate in the locality in which the Code Member is located. We are of the opinion that, for the purpose of clarification, rule 1 (I) of Section VII of Exhibit No. 825 should be modified so as to provide that the current market rate of interest which must be charged is the current rate in the locality to which the coal is shipped to the vendee.

Accordingly, we modify rule 6 of Section VIII of the rules proposed by District Board No. 11 to read as follows:

Where payment is made by note, trade acceptance, or other form of indebtedness, or where payment is made under any circumstances after the due date of the account, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

In order to indicate that the rule prohibiting deductions or allowances from invoice prices does not prohibit Code Members from conducting advertising campaigns seeking to increase the use of coal where the expenses for such campaigns are not paid by means of deductions or allowances from the invoice prices we are of the opinion that rules 1 and 2 of Section IX of the rules proposed by District Board No. 11 should be modified to read as follows:

1. No deduction or allowance from invoice prices shall be granted by any Code Member or his sales agent to any purchaser for advertising.

2. Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a Code Member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

Rule 1 under the caption *Coal Confiscated or Lost in Transit* of Section XII of the rules contained in Exhibit No. 825 is a modification of rule 7 of Section IX of Exhibit No. 822, which contains the rules proposed by District Board No. 11. As previously stated, it was the opinion of the witness for District Board No. 11 that the rules contained in Exhibit No. 825 were reasonable for District No. 11. The rule relating to coal confiscated or lost in transit contained in Exhibit No. 825 does not provide whether the established minimum price to be charged for such coal is the established price for the coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss. We are of the opinion that whichever of these two established prices is the higher should be charged by the Code Member. The Code Member in any event is entitled to the minimum price for the coal for shipment to the destination and use to which the coal was sold. However, if the established minimum price for sale to the carrier is higher than such price, it is necessary to provide that the price for sale to the carrier must be charged. Otherwise evasion would be made possible by means of confiscation. Accordingly, we modify rule 1 under the caption *Coal Confiscated or Lost in Transit* of Section XI of Exhibit No. 825 to read as follows:

All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

Exhibit No. 825 contains no rule relating to substitution. The witness for the Marketing Division of the Commission, who introduced Exhibit No. 825 into evidence, stated that the Exhibit is not to be construed as representing the deletion or any modification of rules relating to substitution as proposed by the various District Boards. District Board No. 11 proposed a substitution rule in paragraph 8 of Section IX of Exhibit No. 822. We are of the opinion that the second paragraph of rule 8 (e) of Section IX of Exhibit No. 822 should be deleted for the reason that it is impractical to enforce. Likewise, rule 8 (f) of Section IX of Exhibit No. 822 should be deleted for the reason that it creates a discrimination, the necessity for which is not justified by the evidence.

Paragraph 12 of Section I of Exhibit No. 825 defines the term "retailing". This term does not appear in rules contained in Exhibit No. 825. However, the term "retailer" does appear in paragraphs 11 and 12 of Section 4 II (i) of the Act and we are of the opinion that Section 4 II (i) of the Act should be promulgated as a part of the marketing rules and regulations. It is likewise our opinion that the term "retailer," as such term is used in paragraphs 11 and 12 of Section 4 II (i) of the Act means a person who purchases coal for resale and sells such coal in lots or upon conditions other than those which would entitle him to a discount under rules and regulations promulgated by the Coal Commission pursuant to Section 4 II (h) of the Act. Accordingly, we delete the definition of "retailing" contained in paragraph 12 of Section I of Exhibit No. 825 and approve the following definition of a "retailer":

A "retailer" is a person who buys coal for resale and sells such coal in lots or upon conditions other than those which would entitle him to a discount under rules and regulations promulgated by the Coal Commission pursuant to Section 4 II (h) of the Act.

Upon the basis of the testimony of the witness for District Board No. 11 that the rules contained in Exhibit No. 825 are desirable and reasonable, we find that the rules proposed by District Board No. 11 in Exhibit No. 822 should be modified to conform to the rules contained in Exhibit No. 825 except as we have already stated otherwise.

Accordingly, we find that the following rules and regulations incidental to the sale and distribution of coal by Code Members in District No. 11 are reasonable, not inconsistent with the requirements of Section 4 of the Act and in

conformance with the standards of fair competition established in the Act:

MARKETING RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DISTRICT NO. 11 AS PROPOSED BY DISTRICT BOARD NO. 11 AND AS APPROVED, DISAPPROVED, OR MODIFIED FOR THE PURPOSE OF COORDINATION

Section 1—Definitions

1. The term "person" as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, cooperatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.

2. A "sales agent" is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: *Provided*, That "sales agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, whose sole compensation is a stated salary per week, per month, or per year, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.

3. A "commission" is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.

4. A "registered distributor" is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.

5. A "spot order" is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days from the effective date of the order, such effective date to be not more than fifteen (15) days from the date upon which the order was accepted.

6. A "contract" is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than the maximum period specified for a spot order.

7. A "quotation" is an offer to sell coal which the offerer may withdraw prior to its being acted upon by the offeree.

8. An "option" is an offer to sell coal acceptable within a time certain, during which time the offerer may not withdraw the offer without the consent of the offeree.

9. A "commitment" is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.

10. "Coal Commission" as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.

11. "Act" as used herein shall mean the Bituminous Coal Act of 1937.

12. A "retailer" is a person who buys coal for resale and sells such coal in lots or upon conditions other than those which would entitle him to a discount under rules and regulations promulgated by the Coal Commission pursuant to Section 4 II (h) of the Act.

13. "District Board" as used herein, shall mean any District Board established under the provisions of Section 4, Part I (a) of the Act.

14. "Statistical Bureau" shall mean, unless otherwise specifically stated, the Statistical Bureau of the Commission for the District in which the coal involved in any transaction is produced, or the District in which is located a mine of a code member affected by any order or regulation.

15. "Minimum Price" shall mean a minimum price established and made effective by the Coal Commission.

16. "Maximum Price" shall mean a maximum price established and made effective by the Coal Commission.

17. The term "producer" includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.

18. The terms "reconsignment" and "diversion" as used herein shall mean the change in the original consignee or in the destination or route.

19. The term "transportation facilities" means railroad cars, ships, barges, trucks, or any other facilities used or useful in the transportation of coal.

20. A "code member" means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.

21. The term "domestic market" shall include all points within the continental United States and Canada, and car-ferry shipments to the Island of Cuba. Bunker coal delivered to steamships for consumption thereon shall be regarded as shipped within the domestic market.

22. "Cargo shipments" is a quantity of coal loaded in a vessel, boat or barge for transportation via water.

23. "Bunker coal" or "vessel fuel" is that coal used aboard a boat or vessel for consumption thereon.

24. "Coal" as used herein shall mean bituminous coal.

25. The term "bituminous coal" includes all bituminous, semi-bituminous and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.

26. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person,

whether through the ownership of voting securities, by contract, or otherwise.

Section II—Sales Agents

1. All appointments of Sales Agents by Code Members or their agents or authorized representatives shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.

2. Each Code Member shall be responsible for the compliance by all his Sales Agents and agents and employees of Sales Agents and agents with the provisions of the Bituminous Coal Code and of all rules and regulations, promulgations and determinations of the Coal Commission.

3. Each Code Member shall require all his sales agents clearly to set forth upon any offer, contract, spot order, invoice, and statement of account covering coal sold or to be sold, the name of such Code Member principal, and the name of the mine or mines from which shipment was made or is to be made. If the name of the sales agent also appears in the transaction, then the above mentioned forms shall also disclose the fact of agency relationship with the Code Member principal.

4. (A) Every contract for the appointment of a sales agent by Code Members or by agents or authorized representatives of Code Members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, including the amount or basis of the sales agent's commission. Certified copies of all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.

(B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.

(C) Upon the expiration, termination, or rescission of any sales agency contract, the Code Member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.

5. (A) As to all coal sold by a Code Member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code Member at his principal place of business or at a regularly established sales office, such Code Member shall, not later than the fifteenth day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was

sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.

(B) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen employed at the principal place of business or a regularly established sales office of the sales agent.

(C) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, a statement showing the names and addresses of distributors to whom the Code Member or his sales agents sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.

6. Within twenty (20) business days after the effective date of these rules and regulations, each Code Member shall file with the Coal Commission a list showing the names and addresses of all his sales agents. Upon any change in said list, the Code Member shall notify the Coal Commission within ten (10) business days after such change takes place.

7. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published monthly by the Coal Commission.

8. All agency contracts and other information filed by Code Members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code Member from whom the same shall have been obtained, except where such disclosure is required in any proceeding before the Coal Commission by way of enforcement of the Act or upon the order of any court of competent jurisdiction.

9. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of a Code Member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent.

(a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and

(b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as all proper Orders of the Commission, and

(c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.

10. No commission shall be paid to a sales agent by a Code Member where the coal is delivered or sold to any person who owns such sales agent or who financially or otherwise controls such agent.

11. When any commissions are paid to a sales agent on a tonnage basis, the Code Member shall not include in the computation of such commissions any part of the tonnage of coal sold by him to the sales agent, whether for consumption or resale.

12. No Code Member shall employ any person or appoint any sales agent at a compensation obviously disproportionate to the ordinary value of the service or services rendered and whose employment or appointment is made with the primary intention and purpose of securing a preferment with a purchaser or purchasers of coal.

13. Subject to further order of the Coal Commission, the amount of commission to be paid by a Code Member to his sales agent shall be fixed by agreement of the parties, subject, however, that upon complaint of violation of the unfair methods of competition, as provided in the Act, the amount of such commission shall be subject to review by the Coal Commission.

Section III—Discounts

1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.

2. Code Members or their sales agents may allow discount from minimum prices or sales of coal to registered distributors, not in excess of the maximum discount or price allowance prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on any such sale.

3. Except as expressly authorized in rules and regulations or orders promulgated by the Coal Commission, no Code Member or sales agent may grant or allow any discount or reduction, including any allowance for shipping on a Government Bill of Lading, from the applicable minimum prices upon the sale of coal to any person, including agencies of the Federal Government or agencies of state or local governments.

4. Every sale of coal to a distributor upon which a discount is allowed shall be made subject to the express condition that the distributor is authorized to receive the discount.

Section IV—Limitation of Orders, Agreements, Options and Quotations

1. Subject to further order of the Coal Commission no Code Member or sales agent of the Code Member shall enter

into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement or order: *Provided*, however, that contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with agencies of State or local governments, where the contract is entered into through competitive bidding, at the following applicable minimum prices:

(a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum prices in effect at the time of the making of the agreement;

(b) For deliveries thereafter, at not less than the applicable minimum prices in effect at the time of delivery.

Provided, further, That contracts for periods not exceeding one (1) year at prices not less than the said applicable minimum prices may be made with agencies of the Federal Government or with such agencies of the State or local governments, in the absence of competitive bidding, where by virtue of an express exemption in the statute or ordinance such agencies may enter into contracts for the purchase of coal without regard to competitive bidding.

2. While the preceding rule is in effect, no option may be given by a Code Member or sales agent for the purchase of coal. When the above rule is suspended or revoked by the Coal Commission, options for the sale of coal may be given for a period not exceeding fourteen (14) days. No options may be given at a price less than the applicable minimum price in effect at the time of the giving of the option. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the option shall not have been exercised at that time, the option thereupon shall become null and void: *Provided, however*, That in connection with offers to sell to the United States Government, or States or political subdivisions thereof, options may be given for a period not exceeding forty-five (45) days from the date of the offer or from the final date for the filing of offers.

3. Quotations may also be given for a period of not exceeding fourteen (14) days. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the quotation shall not have been accepted at that time, the quotation thereupon shall become null and void.

4. Every quotation and option shall provide that it is made subject to the provisions of the Marketing Rules and Regulations of the Coal Commission.

5. All quotations and options must be made or confirmed in writing. Every Code Member, or his sales agent, shall require of his offeree that the acceptance

of a quotation or the exercise of an option be in writing.

Section V—Spot Orders

1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.

2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code Member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provision of the order:

"(a) No shipment consigned to any destination may be reconsigning or diverted without the consent of the seller to be confirmed in writing. In case of any reconsigning or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of the reconsigning or diversion for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.

"(b) The coal shipped pursuant to this order is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied.

"(c) If shipments called for by this order are not completed within thirty (30) days from the effective date of this order, the unfilled portion of the order shall not be delivered."

3. In any case where a sale is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (a) of this section without first securing the consent of his Code Member principal to be confirmed in writing.

4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the written confirmation thereof and such order or written confirmation thereof shall specifically contain all the terms required by Rule 1 of Section VI of these Marketing Rules and Regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof, the Code Member or his sales agent shall file with the Statistical Bureau or Bureaus a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau or Bureaus in the same manner.

5. All spot orders for the sale of coal, the minimum price of which is subject to seasonal increase, shall provide that the price payable thereunder shall not be less than the price to be in effect at time of delivery as established at the time of the making of the spot order.

Section VI—Contracts

Upon the revocation or suspension of rule 1 of Section IV of these Marketing Rules and Regulations, Code Members or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal upon the following terms and conditions:

1. Every contract shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal, the number of cars or tonnage to be shipped, the name of the Code Member and the name of the originating mine, and, where the coal is purchased for consumption, the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) covering a buyer's requirements and stating the estimated tonnage to be shipped with an allowable overshipment of not exceeding ten (10) per cent of such estimated tonnage.

The provisions of the rule stated in the foregoing paragraph relating to quantity shall not apply to contracts made with agencies of the Federal, State or local governments in case the terms required to be submitted in a bid or offer for such contract are in conflict with such provisions.

2. No contract for the sale of coal shall provide for deliveries to commence at a date later than ninety (90) days from the date upon which such contract is entered into.

3. No contract shall be made at a price below the applicable minimum price as established by the Coal Commission at the time of the making of the contract for the coal to be sold thereunder, and no coal may be delivered upon a contract at a price below such applicable minimum price.

4. All contracts for the sale of coal the minimum price of which is subject to seasonal increase, shall provide that the price payable thereunder shall not be less than the price to be in effect at the time of delivery as established at the time of the making of the contract.

5. No contract shall provide for delivery over a period in excess of twelve (12) months except by special permission and approval of the Coal Commission, upon a showing of the necessity of meeting the long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the

Commission may deem appropriate in order to further the effectual administration of the Act.

6. Any change in the terms of a contract, not in violation of these Rules and Regulations, shall be evidenced by a written agreement and shall conform to all the requirements set forth in these Rules and Regulations.

7. A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau or Bureaus, within fifteen (15) business days from the date of the making of the agreement. Such report shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: *Provided, however,* That a report of the commitment need not be filed if a copy of the contract is filed within fifteen (15) business days.

8. Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provision of the contract:

"(a) This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937 and the proper orders and regulations issued thereunder by the National Bituminous Coal Commission.

"(b) No shipment consigned to any destination point may be reconsigned or diverted without the consent of the seller to be confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of the reconsignment or diversion for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.

"(c) The coal shipped pursuant to this contract is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."

9. In any case where a contract is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in item 8 (b) of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.

10. The making of a contract for the sale of coal at a price below the mini-

mum or above the maximum therefor established by the Commission at the time of the making of the contract shall constitute a violation of the code and such contract shall be invalid and unenforceable.

11. No contract shall be made for the sale of coal for delivery after the expiration date of the Act at a price below the minimum or above the maximum therefor established by the Coal Commission and in effect at the time of making the contract.

Section VII—Terms of Payment

1. The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his sales agent, through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

(A) On rail, river, ex-river, or truck shipments, the date of payment of invoices for coal sold shall be on or before the twentieth day of the month following the month in which shipment was made.

(B) On tidewater cargo shipments the date of payment shall be not more than thirty (30) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for tidewater cargo shipment, on or before the twentieth day of the month following the month in which the coal is dumped.

(C) Payment for all tidewater Bunker coal supplied for foreign vessels shall be by cash on delivery or by master's draft on owners in United States currency at not exceeding fifteen (15) days' sight at supplier's option. When drafts are accepted in payment, all bank charges for collection, exchange, etc., shall be for owner's account. Payment for tidewater bunker coal supplied for American vessels shall be made on or before the twentieth day of the month following delivery.

Payment for coal shipped for vessel fuel, and delivered into vessels at ports on the Great Lakes or tributary waters thereof, shall be made on or before the twentieth (20th) day of the month following such delivery.

(D) On lake cargo shipments, the date of payment shall be not more than sixty (60) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for lake cargo shipments, on or before the twentieth (20th) of the second month following the month in which dumped.

(E) On all coal sold to railroads, the date of payment shall be on or before the twenty-fifth (25th) day of the month following the date of shipment.

(F) Invoices shall be paid in full in United States currency, or funds equivalent thereto, not later than the due date.

(G) No portion of the sale price may be withheld by agreement between the buyer and the seller based upon any unadjusted claim of the buyer.

(H) No sale, delivery, or offer for sale of coal shall be made upon any condition, express or implied, that any portion of the sale price may be withheld by the buyer, or deposited in escrow, pending or based upon a determination of the constitutionality of any provision of the Act, of the jurisdiction of the Coal Commission, or the validity or applicability of any order of the Coal Commission.

(I) Where payment is made by note, trade acceptance or other form of indebtedness, or where payment is made under any circumstances after the due date of the account, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

(J) Freight on all-rail or ex-river shipments shall not be paid by a Code Member, or his sales agent, except to prepay stations as published in current railway tariffs or on shipments to the United States Government, States or political subdivisions thereof. Where freight is thus prepaid, the amount thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.

(K) No Code Member shall accept as payment in full for any account for the sale of coal any amount which is less than the applicable minimum price for the quantity of coal involved. *Provided,* however, that a Code Member may enter into a bona fide general creditors' composition with other creditors of a defaulting purchaser. A copy of such creditor's composition shall be filed with the Statistical Bureau within ten (10) business days from the date of making such composition.

(L) The agreement by a Code Member, expressed or implied, to extend the credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the Code.

Section VIII—Use of Coal Analyses

1. Analyses of coal shall not be utilized by a Code Member, or his sales agent, in selling or offering for sale any coal produced by the Code Member, whether or not the analysis is a term in the offer or sale, unless such Code Member shall have filed with the Statistical Bureau and the District Board for the District in which the coal is produced, a report of the analysis or analyses as used or proposed to be used by him. Such report shall show the following:

(a) The name of the Code Member Producer.

(b) The name of the mine.

(c) The name or geological number of the seam or seams from which the coal is produced.

(d) The name of the size, and, if screened, the dimension or dimensions of the screen or screens over and/or through which the coal is prepared.

(e) Whether the analysis is representative of the entire production of such size of coal, or whether it represents only a portion of such production segregated by selective mining, selective preparation, actual analyses made at the mine, or in any other manner.

(f) That such analysis is representative of the grade and size of the coal as regularly produced by the Code Member and as loaded directly into transportation facilities for shipment to market and that the Code Member is prepared to make deliveries of coal of substantially the quality and character as shown by the analysis.

(g) That each such analysis is not less than a proximate analysis showing moisture content, ash, volatile matter, fixed carbon, sulphur and British thermal units and ash softening temperature.

2. Every analysis used in selling, or offering for sale, any particular kind, quality, or size of coal shall be accompanied by a statement to the effect that a copy of such analysis has been properly filed with the Statistical Bureau, the Coal Commission and the District Board.

3. All reports of analyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time during office hours by any interested person, and may be considered by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the Code Member.

4. A copy of any analysis of the coal of a Code Member made by or on behalf of a consumer and accepted by the Code Member as the basis for an adjustment of price under any contract or spot order shall be filed by the Code Member with the Statistical Bureau, the Coal Commission and the District Board, within five (5) business days after such adjustment is made.

5. From and after the effective date of these Rules and Regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: Provided, That where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for sub-standard preparation or quality under Section X of these Marketing Rules and Regulations.

Section IX—Resale of Coal Refused in Transit or at Destination

1. Where coal is refused by a consignee in transit or at destination, the Code

Member may sell the same at the best obtainable price, provided that in each case the Code Member shall file with the Statistical Bureau, and the District Board for the District in which the coal was produced, within five (5) business days from the date of such resale, a statement giving the following information:

- (a) Name of consignee.
- (b) Address of the consignee.
- (c) Original destination of the coal.
- (d) Name of Code Member.
- (e) Originating mine.
- (f) The grade and size of coal shipped.
- (g) Price at which coal sold.
- (h) Reasons for the refusal.
- (i) Facts resulting from the investigation of the complaint.
- (j) Name of ultimate purchaser upon resale.
- (k) Address of purchaser upon resale.
- (l) Ultimate destination of the coal.
- (m) Price received by the seller upon resale.
- (n) Amount of commission, if any, paid upon the resale.

(o) A copy of the carrier's notice of refusal or a notice of reconsignment and such other pertinent information and facts as may be offered in proof of the necessity for such resale.

(p) A signed and verified statement that the provisions of the Code and the Marketing Rules and Regulations of the Coal Commission other than as to price have not been violated or evaded.

2. All Code Members shall properly furnish to the District Board and to the Statistical Bureau of the Coal Commission for the District in which the coal originated, full reports of all reconsignments, and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.

Section X—Substandard Preparation or Quality

1. Where any claim of allowance or counterclaim is requested by a buyer for any delivery of coal claimed to be substandard in preparation or quality, or where it is claimed by the buyer that due to an error on the part of the shipper the buyer has incurred additional and extraordinary expense in accepting the shipment, the Code Member or his sales agent may, within a reasonable time after delivery of the coal, make settlement and agree with the buyer upon an amount reasonably to be deducted for such inferior coal or on account of such error, and may accept payment therefor at less than the applicable minimum price: *Provided*, That in each such case the Code Member shall within five (5) business days after granting such allowance file with the District Board and the Statistical Bureau of the Coal Commission a verified statement giving the following information:

- (a) The name and address of the consignee and the reason for the request for the allowance.

(b) The price at which the coal was sold, the tonnage delivered, the name of the mine, the Code Member, the date of shipment, the grade and size of coal, the destination, and the amount of allowance or adjustment made.

(c) Such other pertinent information and facts as may be offered in proof of the necessity for such reduction or allowance.

(d) A statement that the adjustment has not been made with the purpose or intent of evading the price provisions of the Act.

The Code Member shall also file, together with the statement, a written claim duly executed by or on behalf of the buyer and verified by affidavit, setting forth the amount claimed by way of deduction and the reasons for the complaint.

2. All such adjustments and allowances shall be subject to review by the Coal Commission.

Section XI—Substitutions

1. No substitution may be made upon any spot order or contract, of any grade or size of coal taking a minimum price higher than the price specified in such order or contract, except upon the following conditions:

(a) The proposed substitution shall not be an express or implied condition of the order or contract.

(b) The coal substituted must be coal which the code member has already produced and loaded into transportation facilities prior to time of application for permit to substitute, and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific mine.

(c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the code member.

(d) The substitution shall be acceptable to the purchases of the coal, and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the code member over his competitors.

(e) Such substitution may be made only with the approval of a duly designated representative of the Commission and in each instance formal application therefor shall be made upon forms provided by the Commission and permits shall be issued prescribing the conditions of substitution in each case approved.

(f) Copies of substitution permits shall be mailed daily to the office of the District Board and weekly summaries of substitution permits shall be mailed to all District Boards within the Price Area. The Commission may from time to time publish the essential facts as to all substitution permits granted.

(g) In each case of coal shipped under a substitution permit each invoice shall

specifically show the permit number and the size and grade of coal substituted.

Section XII—Miscellaneous

General

1. The minimum prices established by the Commission shall not apply to coal sold and shipped outside the domestic market as defined in the Act and in these Marketing Rules and Regulations.

2. Maximum prices established by the Commission shall not apply to coal sold and shipped outside the continental United States.

3. No coal shall be sold or delivered or offered for sale at a price below the minimum or above the maximum therefor established by the Commission, and the sale or delivery or offer for sale of coal at a price below such minimum or above such maximum shall constitute a violation of the Code: *Provided*, That the provisions of this paragraph shall not apply to a lawful and bona fide written contract entered into prior to June 16, 1933, which has been filed with the Coal Commission.

4. If, in converting a net or gross ton price, freight rate or freight rate differential, the calculation extends to more than 3 decimals, and the 4th decimal is 0.0005 or more, it shall be added as 0.001, and if under 0.0005 it shall be eliminated.

5. All coal shall be sold and invoiced on a price per ton basis, and all coal must be sold and invoiced under the size, price classification and other designation therefor in the price schedule published by the Coal Commission.

6. Failure to file information required by these Marketing Rules and Regulations or the filing of false information, wilfully made, will subject the party failing to file the information required, or the party so filing, to the penalties of the Act and other penalties imposed by law.

Advertising

1. No deduction or allowance from invoice prices shall be granted by any Code Member or his sales agent to any purchaser for advertising.

2. Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a Code Member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

Screening for Buyer's Account

1. The screening of mine run or re-screening of other grades of coal, sold and billed as such, for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited.

Coal Confiscated or Lost in Transit

1. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

Revision of Marketing Rules and Regulations

1. These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

Unfair Methods of Competition

See page 584.

Penalties

See page 584.

MINIMUM PRICE AREA NO. 2—DISTRICT BOARD NO. 12

PROPOSED MARKETING RULES AND REGULATIONS

A witness for District Board No. 12, properly qualified as an expert in the marketing of coal for that District, introduced into evidence as Exhibit No. 828 the rules and regulations proposed by District Board No. 12. The witness testified that these rules and regulations were submitted to each of the Code Members in District No. 12, and that no protests were filed with the Board against such rules. The witness further testified that he agreed with the opinions expressed by the witness for the Marketing Division of the Commission as to the rules contained in Exhibit No. 825 and that in his opinion the modifications, clarifications, deletions and additions to the rules proposed by his District Board represented by the rules contained in Exhibit No. 825 are reasonable except that the terms of payment contained in Section IX of the rules proposed by District Board No. 12 should prevail for that District. The witness was of the opinion that the terms of payment contained in the rules proposed by District Board No. 12 are the customary terms of credit which have been allowed by producers in District No. 12 and that terms in conflict with those proposed by the District Board are not desirable. On the basis of this testimony, we find that the terms of payment contained in Section IX of Exhibit No. 828 are reasonable and should be approved for the purpose of coordination.

The witness was further of the opinion that the rule contained in Section X of Exhibit No. 828 relating to market areas is reasonable although such rule might be considered as a part of the proposal of coordinated prices. This rule is not properly a marketing rule and regula-

tion but should be proposed as part of coordinated prices.

Rule 1 (I) of Section VII of Exhibit No. 825 does not provide whether the current rate of interest to be charged is the rate of interest in the locality to which the coal is shipped to the vendee, or the rate in the locality in which the Code Member is located. We are of the opinion that, for the purpose of clarification, this rule should provide that the current market rate of interest which must be charged is the current rate in the locality to which the coal is shipped to the vendee.

In order to make clear that the rule prohibiting deductions or allowances from invoice prices does not prohibit Code Members from conducting advertising campaigns seeking to increase the use of coal where the expenses for such campaigns are not paid by means of a deduction or allowance from the invoice price, we are of the opinion that rules 1 and 2 of Section XI under the caption *Advertising* should be modified to read as follows:

1. No deduction or allowance from invoice prices shall be granted by any Code Member or his sales agent to any purchaser for advertising.

2. Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a Code Member, his agent or representative, for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

Rule 1 under the caption *Coal Confiscated or Lost in Transit* of Section XI of the rules contained in Exhibit No. 825 is a modification of rule 7 of Section XI of the rules proposed by District Board No. 12. This rule relating to coal confiscated or lost in transit does not state whether the established minimum price to be charged for such coal is the price for the coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss. We are of the opinion that whichever of these two established prices is the higher should be charged by the Code Member. The Code Member in any event is entitled to the minimum price for the coal for shipment to the destination and use to which the coal was sold. However, if the established minimum price for sale to the carrier is higher than such price, it is necessary to provide that the price for sale to the carrier must be charged for the reason that otherwise evasion would be made possible by means of confiscation. Accordingly, we modify rule 1 under the caption *Coal Confiscated or Lost in Transit* of Section XI of Exhibit No. 825 to read as follows:

All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

On cross-examination, the witness for District Board No. 12 was asked his opinion of the following definition of a "retail dealer":

A "retail dealer" should mean a person regularly engaged in the retail solid fuel industry who maintains or has available properly equipped unloading, storage and service facilities reasonably commensurate with the nature of the business; equipped with and using wagon or truck scale of sufficient sizes and capacity and maintained in condition to accurately weigh the maximum gross load for which it is utilized (unless local ordinance requires otherwise; maintaining an office accessible to the public with a competent person on duty; and who maintains or has available a sufficient stock of solid fuel at all times for the purpose of retailing and not for his own consumption to supply the general requirements of the community.

There is no testimony in the record as to the purpose of this definition. As previously stated, the witness was of the opinion that the rules contained in Exhibit No. 825 represented desirable and reasonable modifications of the rules proposed by District Board No. 12 except as to such rules relating to terms of payment which were in conflict with the rules proposed by District Board No. 12. The term "retail dealer" does not appear in the rules contained in Exhibit No. 825. However, the term does appear in rule 6 of Section XI of the rules proposed by District Board No. 12. Rule 6 of Section XI of Exhibit No. 828 relates to substitution. The witness for the Marketing Division stated that Exhibit No. 825 is not to be construed as representing the deletion of any rule relating to substitution as it may have been proposed by the District Boards. Rule 6 of Section XI of Exhibit No. 828 provides that no permit for substitution shall be issued in connection with the shipment of coal sold to a retail dealer. A "retail dealer" is defined in paragraph 7 (a) of Section I of the rules proposed by District Board No. 12 as follows:

A "retail dealer" is a person properly equipped with storage yard, office scales, etc., who purchases coal for resale and resells it to consumers in less than railroad carload lots.

We can see no reasonable purpose in differentiating between persons who purchase coal for resale and who come within the definition of a "retail dealer" proposed by District Board No. 12 or the definition proposed to the witness for District Board No. 12 on cross-examination and persons, not distributors, who pur-

chase coal for resale and who do not come within the terms of these definitions.

The witness for District Board No. 12 stated on cross-examination that there are persons in District No. 12 who purchase coal in railroad cars and trucks and resell such coal from such cars and trucks. Under the proposed definitions of a "retail dealer" and the rule proposed by District Board No. 12 relating to substitution, a substitution permit may be issued in connection with the sale of coal to one who resells such coal out of a railroad car or truck and who is not properly equipped with storage yards and office scales but not in connection with the sale of coal to one who purchases for resale and who maintains proper storage facilities and otherwise comes within the proposed definitions. This discrimination, in our opinion, is unreasonable and not warranted by the evidence.

The term "retailer" appears in paragraphs 11 and 12 of Section 4, Part II (i) of the Act containing the Unfair Methods of Competition which should be promulgated as part of the Marketing Rules and Regulations. We are of the opinion that the term "retailer," appearing in paragraphs 11 and 12 of Section 4 II (i) of the Act means a person who purchases coal for resale and sells such coal in lots or upon conditions other than those which would entitle him to a discount under rules and regulations promulgated by the Coal Commission pursuant to Section 4 II (h) of the Act. This definition of a "retailer" is, in our opinion, more reasonable than the definition of a "retail dealer" proposed by District Board No. 12 or the definition of a "retail dealer" proposed to the witness for District Board No. 12 on cross-examination. Accordingly, we approve the following definition of a "retailer":

A "retailer" is a person who buys coal for resale and sells such coal in lots or upon conditions other than those which would entitle him to a discount under rules and regulations promulgated by the Coal Commission pursuant to Section 4 II (h) of the Act.

Rule 6 of Section XI of the rules proposed by District Board No. 12 provides for the issuance by the District Board of substitution permits and also provides that the District Board shall publish to Code Members at least once a week a list of substitution permits issued by the District Board during the preceding week. We are of the opinion that proper enforcement of the minimum prices requires that substitutions may only be made upon permission by the Statistical Bureau of the Coal Commission. Accordingly, we modify rule 6 of Section XI of Exhibit No. 828 to read as follows:

Substitution.—(a) No substitution of grades or sizes of coal carrying a higher Code price may be made on spot orders or contracts, unless authorized by the Statistical Bureau of the Coal Commis-

sion. Requests for permission to make substitutions shall be submitted to the Statistical Bureau in writing and shall be approved only upon satisfactory evidence that such substitution is necessary as a temporary and emergency measure and will not result in unfair advantage to either the Code Member or the Buyer. Upon approval of a request for substitution, the Statistical Bureau will issue a permit to the Code Member in each instance which permit shall be limited to a maximum number of tons for shipment during a period not to exceed thirty (30) days. No permit for substitution shall be issued in connection with the shipment of coal sold to a retailer. The issuance of such permits will be restricted for application to spot orders or contracts filed with the Statistical Bureau. All permits issued hereunder shall be consecutively numbered.

(b) Each Statistical Bureau shall publish to the District Board and to the Code Members within its District, at least once in each week, a list of the permits for substitution issued by the Statistical Bureau during the preceding week. Such publication shall show the name of the Code Member to whom the permit is issued, the permit number, the tonnage and grade or sizes involved in the substitution, the reason therefor, whether for application upon spot order or contract, and the period of time for which the permit is granted.

Upon the basis of the testimony of the witness for District Board No. 12 that the rules contained in Exhibit No. 825 are desirable and reasonable, we find that the rules proposed by District Board No. 12 in Exhibit No. 828 should be modified to conform to the rules contained in Exhibit No. 825 except as we have already stated otherwise.

Accordingly, we find that the following rules and regulations incidental to the sale and distribution of coal by Code Members in District No. 12 are reasonable, not inconsistent with the requirements of Section 4 of the Act and conform to the standards of fair competition established in the Act:

MARKETING RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DISTRICT NO. 12 AS PROPOSED BY DISTRICT BOARD NO. 12 AND AS APPROVED, DISAPPROVED, OR MODIFIED FOR THE PURPOSE OF COORDINATION

Section 1—Definitions

1. The term "person" as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, cooperatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.

2. A "sales agent" is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: *Provided*, That "sales

agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, whose sole compensation is a stated salary per week, per month, or per year, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.

3. A "commission" is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.

4. A "registered distributor" is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.

5. A "spot order" is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days from the effective date of the order, such effective date to be not more than fifteen (15) days from the date upon which the order was accepted.

6. A "contract" is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than the maximum period specified for a spot order.

7. A "quotation" is an offer to sell coal which the offerer may withdraw prior to its being acted upon by the offeree.

8. An "option" is an offer to sell coal acceptable within a time certain, during which time the offerer may not withdraw the offer without the consent of the offeree.

9. A "commitment" is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.

10. "Coal Commission" as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.

11. "Act" as used herein shall mean the Bituminous Coal Act of 1937.

12. A "retailer" is a person who buys coal for resale and sells such coal in lots or upon conditions other than those which would entitle him to a discount under rules and regulations promulgated by the Coal Commission pursuant to Section 4 II (h) of the Act.

13. "District Board" as used herein, shall mean any District Board established under the provisions of Section 4, Part I (a) of the Act.

14. "Statistical Bureau" shall mean, unless otherwise specifically stated, the Statistical Bureau of the Commission for the District in which the coal involved in any transaction is produced, or the District in which is located a mine of a code member affected by any order or regulation.

15. "Minimum Price" shall mean a minimum price established and made effective by the Coal Commission.

16. "Maximum Price" shall mean a maximum price established and made effective by the Coal Commission.

17. The term "producer" includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.

18. The terms "reconsignment" and "diversion" as used herein shall mean the change in the original consignee or in the destination or route.

19. The term "transportation facilities" means railroad cars, ships, barges, trucks, or any other facilities used or useful in the transportation of coal.

20. A "code member" means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.

21. The term "domestic market" shall include all points within the continental United States and Canada, and car-ferry shipments to the Island of Cuba. Bunker coal delivered to steamships for consumption thereon shall be regarded as shipped within the domestic market.

22. "Cargo shipment" is a quantity of coal loaded in a vessel, boat or barge for transportation via water.

23. "Bunker coal" or "vessel fuel" is that coal used aboard a boat or vessel for consumption thereon.

24. "Coal" as used herein shall mean bituminous coal.

25. The term "bituminous coal" includes all bituminous, semi-bituminous and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.

26. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Section II—Sales Agents

1. All appointments of Sales Agents by Code Members or their agents or authorized representatives shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.

2. Each Code Member shall be responsible for the compliance by all his Sales Agents and agents and employees of Sales Agents and agents with the provisions of the Bituminous Coal Code and of all rules and regulations, promulgations and determinations of the Coal Commission.

3. Each Code Member shall require all his sales agents clearly to set forth upon any offer, contract, spot order, invoice, and statement of account covering coal sold or to be sold, the name of such Code Member principal, and the name of the

mine or mines from which shipment was made or is to be made. If the name of the sales agent also appears in the transaction, then the above mentioned forms shall also disclose the fact of agency relationship with the Code Member principal.

4. (A) Every contract for the appointment of a sales agent by Code Members or by agents or authorized representatives of Code Members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, including the amount or basis of the sales agent's commission. Certified copies of all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.

(B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.

(C) Upon the expiration, termination, or rescission of any sales agency contract, the Code Member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.

5. (A) As to all coal sold by a Code Member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code Member at his principal place of business or at a regularly established sales office, such Code Member shall, not later than the fifteenth day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.

(B) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen employed at the principal place of business or a regularly established sales office of the sales agent.

(C) Not later than the fifteenth day of each month, each Code Member shall also file with the Statistical Bureau or Bureaus, a statement showing the names and addresses of distributors to whom the Code Member or his sales agents sold

coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.

6. Within twenty (20) business days after the effective date of these rules and regulations, each Code Member shall file with the Coal Commission a list showing the names and addresses of all his sales agents. Upon any change in said list, the Code Member shall notify the Coal Commission within ten (10) business days after such change takes place.

7. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published monthly by the Coal Commission.

8. All agency contracts and other information filed by Code Members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code Member from whom the same shall have been obtained, except where such disclosure is required in any proceeding before the Coal Commission by way of enforcement of the Act or upon the order of any court of competent jurisdiction.

9. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of a Code Member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent

(a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and

(b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as all proper orders of the Commission, and

(c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.

10. No commission shall be paid to a sales agent by a Code Member where the coal is delivered or sold to any person who owns such sales agent or who financially or otherwise controls such agent.

11. When any commissions are paid to a sales agent on a tonnage basis, the Code Member shall not include in the computation of such commissions any part of the tonnage of coal sold by him to the sales agent, whether for consumption or resale.

12. No Code Member shall employ any person or appoint any sales agent at a compensation obviously disproportionate to the ordinary value of the service or services rendered and whose employment or appointment is made with the primary intention and purpose of securing

a preferment with a purchaser or purchasers of coal.

13. Subject to further order of the Coal Commission, the amount of commission to be paid by a Code Member to his sales agent shall be fixed by agreement of the parties, subject, however, that upon complaint of violation of the unfair methods of competition, as provided in the Act, the amount of such commission shall be subject to review by the Coal Commission.

Section III—Discounts

1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.

2. Code Members or their sales agents may allow discount from minimum prices or sales of coal to registered distributors, not in excess of the maximum discount or price allowance prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on any such sale.

3. Except as expressly authorized in rules and regulations or orders promulgated by the Coal Commission, no Code Member or sales agent may grant or allow any discount or reduction, including any allowance for shipping on a Government Bill of Lading, from the applicable minimum prices upon the sale of coal to any person, including agencies of the Federal Government or agencies of state or local governments.

4. Every sale of coal to a distributor upon which a discount is allowed shall be made subject to the express condition that the distributor is authorized to receive the discount.

Section IV—Limitation of Orders, Agreements, Options and Quotations

1. Subject to further order of the Coal Commission no Code Member or sales agent of the Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement or order: *Provided, however*, That contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with agencies of State or local governments, where the contract is entered into through competitive bidding, at the following applicable minimum prices:

(a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum prices in effect at the time of the making of the agreement;

(b) For deliveries thereafter, at not less than the applicable minimum prices in effect at the time of delivery.

Provided, further, That contracts for periods not exceeding one (1) year at

prices not less than the said applicable minimum prices may be made with agencies of the Federal Government or with such agencies of the State or local governments, in the absence of competitive bidding, where by virtue of an express exemption in the statute or ordinance such agencies may enter into contracts for the purchase of coal without regard to competitive bidding.

2. While the preceding rule is in effect, no option may be given by a Code Member or sales agent for the purchase of coal. When the above rule is suspended or revoked by the Coal Commission, options for the sale of coal may be given for a period not exceeding fourteen (14) days. No options may be given at a price less than the applicable minimum price in effect at the time of the giving of the option. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the option shall not have been exercised at that time, the option thereupon shall become null and void: *Provided, however*, That in connection with offers to sell to the United States Government, or States or political subdivisions thereof, options may be given for a period not exceeding forty-five (45) days from the date of the offer or from the final date for the filing of offers.

3. Quotations may also be given for a period of not exceeding fourteen (14) days. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the quotation shall not have been accepted at that time, the quotation thereupon shall become null and void.

4. Every quotation and option shall provide that it is made subject to the provisions of the Marketing Rules and Regulations of the Coal Commission.

5. All quotations and options must be made or confirmed in writing. Every Code Member, or his sales agent, shall require of his offeree that the acceptance of a quotation or the exercise of an option be in writing.

Section V—Spot Orders

1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.

2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code Member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provision of the order:

"(a) No shipment consigned to any destination may be reconsigned or diverted without the consent of the seller to be confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of the reconsignment or diversion for de-

livery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.

"(b) The coal shipped pursuant to this order is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied.

"(c) If shipments called for by this order are not completed within thirty (30) days from the effective date of this order, the unfilled portion of the order shall not be delivered."

3. In any case where a sale is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (a) of this section without first securing the consent of his Code Member principal to be confirmed in writing.

4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the written confirmation thereon and such order or written confirmation thereof shall specifically contain all the terms required by Rule 1 of Section VI of these Marketing Rules and Regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof, the Code Member or his sales agent shall file with the Statistical Bureau or Bureaus a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau or Bureaus in the same manner.

5. All spot orders for the sale of coal, the minimum price of which is subject to seasonal increase, shall provide that the price payable thereunder shall not be less than the price to be in effect at time of delivery as established at the time of the making of the spot order.

Section VI—Contracts

Upon the revocation or suspension of rule 1 of Section IV of these Marketing Rules and Regulations, Code Members or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal upon the following terms and conditions:

1. Every contract shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal, the number of cars or tonnage to be shipped, the name of the Code Member and the name of

the originating mine, and, where the coal is purchased for consumption, the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) covering a buyer's requirements and stating the estimated tonnage to be shipped with an allowable overshipment of not exceeding ten (10) per cent of such estimated tonnage.

The provisions of the rule stated in the foregoing paragraph relating to quantity shall not apply to contracts made with agencies of the Federal, State or local governments in case the terms required to be submitted in a bid or offer for such contract are in conflict with such provisions.

2. No contract for the sale of coal shall provide for deliveries to commence at a date later than ninety (90) days from the date upon which such contract is entered into.

3. No contract shall be made at a price below the applicable minimum price as established by the Coal Commission at the time of the making of the contract for the coal to be sold thereunder, and no coal may be delivered upon a contract at a price below such applicable minimum price.

4. All contracts for the sale of coal the minimum price of which is subject to seasonal increase, shall provide that the price payable thereunder shall not be less than the price to be in effect at the time of delivery as established at the time of the making of the contract.

5. No contract shall provide for delivery over a period in excess of twelve (12) months except by special permission and approval of the Coal Commission, upon a showing of the necessity of meeting the long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.

6. Any change in the terms of a contract, not in violation of these Rules and Regulations, shall be evidenced by a written agreement and shall conform to all the requirements set forth in these Rules and Regulations.

7. A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau or Bureaus, within fifteen (15) business days from the date of the making of the agreement. Such report shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: Provided, however that a report of the commitment need not be filed if a copy of the contract is filed within fifteen (15) business days.

8. Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provision of the contract:

"(a) This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937 and the proper orders and regulations issued thereunder by the National Bituminous Coal Commission.

"(b) No shipment consigned to any destination point may be reconsigned or diverted without the consent of the seller to be confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of the reconsignment or diversion for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.

"(c) The coal shipped pursuant to this contract is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(a) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."

9. In any case where a contract is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item 8 (b) of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.

10. The making of a contract for the sale of coal at a price below the minimum or above the maximum therefor established by the Commission at the time of the making of the contract shall constitute a violation of the code and such contract shall be invalid and unenforceable.

11. No contract shall be made for the sale of coal for delivery after the expiration date of the Act at a price below the minimum or above the maximum therefor established by the Coal Commission and in effect at the time of making the contract.

Section VII—Terms of Payment

1. The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his sales agent, through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

(A) On rail or truck shipments the date of payment shall be on or before the 10th day of the month following shipment.

(B) On railway fuel, payment shall be made on or before the 25th of the month following date of shipment.

(C) Terms, net cash. (No discount.)

(E) Freight on all-rail shipments shall not be prepaid except to prepay points published in railway tariffs. Where freight is thus prepaid, the amount thereof shall, within twenty-four (24) hours of receipt of freight bill, be invoiced to the Buyer for immediate payment. This provision does not apply on shipments to Federal, State, County, Municipal or Township Institutions.

(F) No portion of the sale price may be withheld by agreement between the buyer and the seller based upon any unadjusted claim of the buyer.

(G) No sale, delivery, or offer for sale of coal shall be made upon any condition, express or implied, that any portion of the sale price may be withheld by the buyer, or deposited in escrow, pending or based upon a determination of the constitutionality of any provision of the Act, of the jurisdiction of the Coal Commission, or the validity or applicability of any order of the Coal Commission.

(H) Where payment is made by note, trade acceptance or other form of indebtedness, or where payment is made under any circumstances after the due date of the account, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

(I) No Code Member shall accept as payment in full for any account for the sale of coal any amount which is less than the applicable minimum price for the quantity of coal involved. Provided, however, that a Code Member may enter into a bona fide general creditors' composition with other creditors of a defaulting purchaser. A copy of such creditor's composition shall be filed with the Statistical Bureau within ten (10) business days from the date of making such composition.

(J) The agreement by a Code Member, expressed or implied, to extend the credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the Code.

Section VIII—Use of Coal Analyses

1. Analyses of coal shall not be utilized by a Code Member, or his sales agent, in selling or offering for sale any coal produced by the Code Member, whether or not the analysis is a term in the offer or sale, unless such Code Member shall have filed with the Statistical Bureau and the District Board for the District in which the coal is produced, a report of the analysis or analyses as used or proposed to be used by him. Such report shall show the following:

(a) The name of the Code Member Producer.

(b) The name of the mine.

(c) The name or geological number of the seam or seams from which the coal is produced.

(d) The name of the size, and, if screened, the dimension or dimensions of the screen or screens over and/or through which the coal is prepared.

(e) Whether the analysis is representative of the entire production of such size of coal, or whether it represents only a portion of such production segregated by selective mining, selective preparation, actual analyses made at the mine, or in any other manner.

(f) That such analysis is representative of the grade and size of the coal as regularly produced by the Code Member and as loaded directly into transportation facilities for shipment in market and that the Code Member is prepared to make deliveries of coal of substantially the quality and character as shown by the analysis.

(g) That each such analysis is not less than a proximate analysis showing moisture content, ash, volatile matter, fixed carbon, sulphur and British thermal units and ash softening temperature.

2. Every analysis used in selling, or offering for sale, any particular kind, quality, or size of coal shall be accompanied by a statement to the effect that a copy of such analysis has been properly filed with the Statistical Bureau, the Coal Commission and the District Board.

3. All reports of analyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time during office hours by any interested person, and may be considered by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the Code Member.

4. A copy of any analysis of the coal of a Code Member made by or on behalf of a consumer and accepted by the Code Member as the basis for an adjustment of price under any contract, or spot order shall be filed by the Code Member with the Statistical Bureau, the Coal Commission and the District Board, within five (5) business days after such adjustment is made.

5. From and after the effective date of these Rules and Regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: *Provided*, That where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for sub-standard preparation or quality under Section X of these marketing Rules and Regulations.

Section IX—Resale of Coal Refused in Transit or at Destination

1. Where coal is refused by a consignee in transit or at destination, the Code Member may sell the same at the best obtainable price, provided that in each case the Code Member shall file with the Statistical Bureau, and the District Board for the District in which the coal was produced, within five (5) business days from the date of such resale, a statement giving the following information:

(a) Name of consignee.
(b) Address of the consignee.
(c) Original destination of the coal.
(d) Name of Code Member.
(e) Originating mine.
(f) The grade and size of coal shipped.

(g) Price at which coal sold.
(h) Reasons for the refusal.
(i) Facts resulting from the investigation of the complaint.

(j) Name of ultimate purchaser upon resale.

(k) Address of purchaser upon resale.
(l) Ultimate destination of the coal.

(m) Price received by the seller upon resale.

(n) Amount of commission, if any, paid upon the resale.

(o) A copy of the carrier's notice of refusal or a notice of reconsignment and such other pertinent information and facts as may be offered in proof of the necessity for such resale.

(p) A signed and verified statement that the provisions of the Code and the Marketing Rules and Regulations of the Coal Commission other than as to price have not been violated or evaded.

2. All Code Members shall properly furnish to the District Board and to the Statistical Bureau of the Coal Commission for the District in which the coal originated, full reports of all reconsignments, and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.

Section X—Substandard Preparation or Quality

1. Where any claim of allowance or counterclaim is requested by a buyer for any delivery of coal claimed to be substandard in preparation or quality, or where it is claimed by the buyer that due to an error on the part of the shipper the buyer has incurred additional and extraordinary expense in accepting the shipment, the Code Member or his sales agent may, within a reasonable time after delivery of the coal, make settlement and agree with the buyer upon an amount reasonably to be deducted for such inferior coal or on account of such error, and may accept payment therefor at less than the applicable minimum price: *Provided*, That in each such case the Code Member shall within five (5) business days after granting such allowance file with the Dis-

trict Board and the Statistical Bureau of the Coal Commission a verified statement giving the following information:

(a) The name and address of the consignee and the reason for the request for the allowance.

(b) The price at which the coal was sold, the tonnage delivered, the name of the mine, the Code Member, the date of shipment, the grade and size of coal, the destination, and the amount of allowance or adjustment made.

(c) Such other pertinent information and facts as may be offered in proof of the necessity for such reduction or allowance.

(d) A statement that the adjustment has not been made with the purpose or intent of evading the price provisions of the Act.

The Code Member shall also file, together with the statement, a written claim duly executed by or on behalf of the buyer and verified by affidavit, setting forth the amount claimed by way of deduction and the reasons for the complaint.

2. All such adjustments and allowances shall be subject to review by the Coal Commission.

Section XI—Substitution

(a) No substitution of grades or sizes of coal carrying a higher Code price may be made on spot orders or contracts, unless authorized by the Statistical Bureau of the Coal Commission. Requests for permission to make substitutions shall be submitted to the Statistical Bureau in writing and shall be approved only upon satisfactory evidence that such substitution is necessary as a temporary and emergency measure and will not result in unfair advantage to either the Code Member or the Buyer. Upon approval of a request for substitution, the Statistical Bureau will issue a permit to the Code Member in each instance which permit shall be limited to a maximum number of tons for shipment during a period not to exceed thirty (30) days. No permit for substitution shall be issued in connection with the shipment of coal sold to a retailer. The issuance of such permits will be restricted for application to spot orders or contracts filed with the Statistical Bureau. All permits issued hereunder shall be consecutively numbered.

(b) Each Statistical Bureau shall publish to the District Board and to the Code Members within its District, at least once in each week, a list of the permits for substitution issued by the Statistical Bureau during the preceding week. Such publication shall show the name of the Code Member to whom the permit is issued, the permit number, the tonnage and grade or sizes involved in the substitution, the reason therefor, whether for application upon spot order or contract, and the period of time for which the permit is granted.

No. 26—3

Section XII—Miscellaneous

General

1. The minimum prices established by the Commission shall not apply to coal sold and shipped outside the domestic market as defined in the Act and in these Marketing Rules and Regulations.

2. Maximum prices established by the Commission shall not apply to coal sold and shipped outside the continental United States.

3. No coal shall be sold or delivered or offered for sale at a price below the minimum or above the maximum therefor established by the Commission, and the sale or delivery or offer for sale of coal at a price below such minimum or above such maximum shall constitute a violation of the Code: *Provided*, That the provisions of this paragraph shall not apply to a lawful and bona fide written contract entered into prior to June 16, 1933, which has been filed with the Coal Commission.

4. If, in converting a net or gross ton price, freight rate or freight rate differential, the calculation extends to more than 3 decimals, and the 4th decimal is 0.0005 or more, it shall be added as 0.001, and if under 0.0005 it shall be eliminated.

5. All coal shall be sold and invoiced on a price per ton basis, and all coal must be sold and invoiced under the size, price classification and other designation therefor in the price schedule published by the Coal Commission.

6. Failure to file information required by these Marketing Rules and Regulations or the filing of false information, wilfully made, will subject the party failing to file the information required, or the party so filing, to the penalties of the Act and other penalties imposed by law.

Advertising

1. No deduction or allowance from invoice prices shall be granted by any Code Member or his sales agent to any purchaser for advertising.

2. Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a Code Member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

Screening For Buyer's Account

1. The screening of mine run or re-screening of other grades of coal, sold and billed as such, for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited.

Coal Confiscated or Lost in Transit

1. All coal confiscated or lost in transit shall be invoiced to the carrier at not

less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

Revision of Marketing Rules and Regulations

1. These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

CONCLUSION

It is the conclusion of the Commission that the schedules or proposed minimum prices and marketing rules and regulations submitted to the Commission by the District Boards for Districts 9, 11 and 12, as amended, corrected, modified or revised, conform to the requirements of Section 4 II (a) of the Act and that same, as amended, corrected, modified, or revised, may properly be transmitted to the respective District Boards within Minimum Price Area 2 to serve as a basis for the coordination as provided in Section 4 II (b) of the Act.

By the Commission.

[SEAL]

PERCY TETLOW,
Chairman.

[F. R. Doc. 39-415; Filed, February 4, 1939; 12:34 p. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

INTERSTATE COMMERCE COMMISSION

RECORDING AND REPORTING OF ACCIDENTS

ORDER

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 28th day of January, A. D. 1939.

The subject of rules for the recording and reporting of accidents being under consideration:

It is ordered, That the second paragraph of the order of October 30, 1936,¹ requiring all carriers by steam railway within the scope of the Accident Reports Act, approved May 6, 1910, to include in their monthly reports of railway accidents an additional statement of the total number of employees on duty injured whose cases are not now reportable on the basis of disability beyond the day, or shift, during which the accident occurred but who suffer an amputation, fracture, impairment of vision, or any permanent injury, or any injury requiring the use of splints or crutches, is hereby canceled.

¹ 1 F. R. 1761.

It is further ordered, That this order shall become effective on January 1, 1939.

By the Commission, division 4.

[SEAL]

W. P. BARTEL,
Secretary.

[F. R. Doc. 39-444; Filed, February 7, 1939;
12:06 p. m.]

[No. 3666]

ORDER IN THE MATTER OF REGULATIONS
FOR TRANSPORTATION OF EXPLOSIVES AND
OTHER DANGEROUS ARTICLES

Present: Frank McManamy, Commissioner, to whom the above entitled matter had been assigned for action thereon.

The matter of regulations for the safe transportation of dangerous articles other than explosives by freight by land being under further consideration:

It is ordered, That, upon applications filed by American Car & Foundry Company and General American Transportation Corporation, order in No. 3666, Special Series A, dated November 5, 1937,¹ be and is hereby amended to provide for construction, operation in experimental service, and reporting of a total of twenty (20) additional tank cars with riveted aluminum tanks, to be constructed in accordance with shipping container specification 103AL, embodied in and made part of aforesaid order, fifteen (15) cars for American Car & Foundry Company and five (5) cars for General American Transportation Corporation, such twenty (20) additional cars to comply in all respects with aforesaid order, as hereby amended, and be authorized for transportation of ethyl acetate, acetone, methanol, and butyraldehyde;

It is further ordered, That the aforesaid order as amended herein be and shall remain in full force and shall be observed until further order of the Commission;

It is further ordered, That the authority granted herein be and is hereby made effective on and after the date of approval and publication thereof;

And it is further ordered, That copies of this order be served upon all the respondents herein, and that notice to the public be given by posting in the office of the Secretary of the Commission at Washington, D. C.

Dated at Washington, D. C., this 1st day of February, 1939.

By the Commission, Commissioner McManamy.

[SEAL]

W. P. BARTEL,
Secretary.

[F. R. Doc. 39-442; Filed, February 7, 1939;
12:06 p. m.]

EXPENDITURES BY CLASS I STEAM RAILROADS
ORDER

At a session of the Interstate Commerce Commission, Division 4, held at

¹ 2 F. R. 2462 (2861 DI).

its office in Washington, D. C., on the 2nd day of February, A. D. 1939.

The matter of expenditures by Class I Steam Railroads, amounting in the aggregate to \$5,000, or more per annum, made to others than employees, being under consideration:

It is ordered, That each and every Class I Steam Railroad subject to the provisions of Section 20 of the Interstate Commerce Act, shall submit to the Bureau of Accounts, Interstate Commerce Commission, at intervals of six months, the following information, each report to be filed in duplicate within 30 days after the close of the period to which it relates and the first report to be for the six months ending June 30, 1939:

1. An itemized report showing amounts recoverable by the carrier whose accounts are rechecked.
2. An itemized report showing the amounts due by the carrier whose accounts are rechecked.
3. An itemized report showing the fees paid to outside rechecking agencies.
4. An estimate in detail of what the cost of rechecking would be if the work had been performed by the carriers' own forces.
5. A statement setting forth reasons for employing outside concerns instead of using its own employees.

By the Commission, division 4.

[SEAL]

W. P. BARTEL,
Secretary.

[F. R. Doc. 39-443; Filed, February 7, 1939;
12:06 p. m.]

Notices

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the
Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 2nd day of February A. D. 1939.

[File No. 31-417]

IN THE MATTER OF CONSOLIDATED ELECTRIC
AND GAS COMPANY

ORDER GRANTING EXEMPTION

Consolidated Electric and Gas Company, a registered holding company, having made application pursuant to Section 3 (b) of the Public Utility Holding Company Act of 1935 for an order of the Commission exempting its subsidiaries. The Islands Gas and Electric Company, Compagnie d'Eclairage Electrique des Villes de Port-au-Prince et du Cap Haitien, Compania Electrica de Santo Domingo, C. por A., Sociedad Anonima Industrial del Este, Gas y Electricidad, S. A., Manila Gas Corporation, Union Electrica de Canarias, S. A., Tranvias de Las Palmas, S. A., and Porto

Rico Gas & Coke Company, from the provisions of said Act applicable to them as subsidiaries of a registered holding company; the record in this matter having been duly considered; and the Commission having made appropriate findings of fact;

It is ordered, That said The Islands Gas and Electric Company, Compagnie d'Eclairage Electrique des Villes de Port-au-Prince et du Cap Haitien, Compania Electrica de Santo Domingo, C. por A., Sociedad Anonima Industrial del Este, Gas y Electricidad, S. A., Manila Gas Corporation, Union Electrica de Canarias, S. A., Tranvias de Las Palmas, S. A., and Porto Rico Gas & Coke Company, be and they are hereby exempted to the extent specified from certain provisions of the Act applicable to them as subsidiary companies of Consolidated Electric and Gas Company, a registered holding company as follows:

(a) Section 6 of the Act, except that this exemption shall not extend to any issue or sale of securities which are to be offered for sale within the United States other than to Islands Gas and Electric Company, or to any exercise of a privilege or right to alter the priorities, preferences, voting power, or any other right of the holders of any security which, prior to the exercise of such privilege or right shall have been offered for sale within the United States, other than securities which are owned or held, directly or indirectly, by associate companies in the United States;

(b) Section 9 of the Act, except that this exemption shall not apply to the acquisition of any utility assets located within the United States or to the acquisition of any interest in the business of, or securities issued or guaranteed by any public utility or holding company, which directly or indirectly, owns or controls utility assets located within the United States;

(c) Section 13 of the Act with respect to any transactions, except the performing of services or construction for, or the sale of goods to any public-utility holding company, or subsidiary thereof which is a public-utility company, operating within the United States;

(d) Section 17 (c) of the Act; and

(e) Section 15 of the Act, unless rules, regulations or orders promulgated by the Commission pursuant to the provisions of such section shall by their terms be made expressly applicable to a company which is not, and which has no subsidiary company which is, a public-utility company operating in the United States; and

(f) Sections 11 (g) and 12 (e) of the Act provided, however, that such exemption shall not be applicable to any solicitation regarding any securities, other than securities owned by Consolidated Electric and Gas Company, or other associates of the issuer, which have been the subject of a public offering within the United States.

¹ 3 F. R. 3047 DI.

It is further ordered, That the exemption herein granted shall expire on December 31, 1940, without prejudice to the right of Consolidated Electric and Gas Company or any of the above-named companies to apply for an extension of the time during which such order shall be effective, and also without prejudice to the right of said Consolidated Electric and Gas Company or any of the above-named companies to apply at any time for such enlargement of any of the provisions of this order as may be deemed appropriate.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-439; Filed, February 7, 1939;
11:32 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 4th day of February 1939.

[File No. 1-469]

IN THE MATTER OF UTILITIES POWER & LIGHT CORPORATION CLASS A STOCK, \$1 PAR VALUE

ORDER GRANTING APPLICATION TO STRIKE FROM LISTING AND REGISTRATION

The New York Stock Exchange, pursuant to Section 12(d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2-1(b) promulgated thereunder, having made application to strike from listing and registration the Class A Stock, \$1 Par Value, of Utilities Power & Light Corporation; and

After appropriate notice,¹ a hearing having been held in this matter; and

The Commission having considered said application together with the evi-

¹ 4 F. R. 27 DI.

dence introduced at said hearing, and having due regard for the public interest and the protection of investors;

It is ordered, That said application be and the same is hereby granted, effective at the close of the trading session on February 14, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-437; Filed, February 7, 1939;
11:32 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 4th day of February 1939.

[File No. 1-1438]

IN THE MATTER OF GULF & SHIP ISLAND RAILROAD COMPANY UNSTAMPED 1ST MORTGAGE REFUNDING AND TERMINAL 5% 50-YEAR GOLD BONDS, DUE FEBRUARY 1, 1952

ORDER GRANTING APPLICATION TO STRIKE FROM LISTING AND REGISTRATION

The New York Stock Exchange, pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2-1 (b) promulgated thereunder, having made application to strike from listing and registration the Unstamped 1st Mortgage Refunding and Terminal 5% 50-Year Gold Bonds, due February 1, 1952, of Gulf and Ship Island Railroad Company; and

After appropriate notice,¹ a hearing having been held in this matter; and

The Commission having considered said application together with the evidence introduced at said hearing, and having due regard for the public interest and the protection of investors;

It is ordered, That said application be and the same is hereby granted, effec-

¹ 4 F. R. 28 DI.

tive at the close of the trading session on February 14, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-438; Filed, February 7, 1939;
11:32 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 4th day of February 1939.

[File No. 1-2238]

IN THE MATTER OF CONCORDIA VIRGINIA MINING CO. 10¢ PAR VALUE COMMON ASSESSABLE SHARES, AND 10¢ PAR VALUE NON-ASSESSABLE SHARES

ORDER GRANTING APPLICATION TO STRIKE FROM LISTING AND REGISTRATION

The San Francisco Mining Exchange, pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2-1 (b) promulgated thereunder, having made application to strike from listing and registration the 10¢ Par Value Common Assessable Shares, and 10¢ Par Value Non-Assessable Shares of Concordia Virginia Mining Company; and

After appropriate notice,¹ a hearing having been held in this matter; and

The Commission having considered said application together with the evidence introduced at said hearing, and having due regard for the public interest and the protection of investors;

It is ordered, That said application be and the same is hereby granted, effective at the close of the trading session on February 14, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-436; Filed, February 7, 1939;
11:32 a. m.]

¹ 3 F. R. 2375 DI.

